

# EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (SGJ)
Debtor.	JAMES DONDERO, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P., THE DUGABOY INVESTMENT TRUST, THE GET GOOD TRUST, and NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HC RE PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY'S APPENDIX TO MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455

**APPENDIX TO MEMORANDUM OF LAW IN SUPPORT OF  
AMENDED RENEWED MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455**

James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC f/k/a HC RE Partners, LLC (collectively, “Movants”) file this Appendix to Memorandum of Law in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C § 455:

Exhibit	Description	Appendix Page No.
<b>A</b>	December 3, 2019, Hearing Transcript	APP. 0001 – APP. 0010
<b>B</b>	January 9, 2020, Hearing Transcript	APP. 0011 – APP. 0021
<b>C</b>	February 19, 2020, Hearing Transcript	APP. 0022 – APP. 0034
<b>D</b>	June 30, 2020, Hearing Transcript	APP. 0035 – APP. 0053

<b>E</b>	July 8, 2020, Hearing Transcript	APP. 0054 – APP. 0062
<b>F</b>	July 14, 2020, Hearing Transcript	APP. 0063 – APP. 0074
<b>G</b>	September 23, 2020, Hearing Transcript	APP. 0075 – APP. 0080
<b>H</b>	October 21, 2020, Hearing Transcript	APP. 0081 – APP. 0091
<b>I</b>	December 10, 2020, Hearing Transcript	APP. 0092 – APP. 0097
<b>J</b>	December 16, 2020, Hearing Transcript	APP. 0098 – APP. 0103
<b>K</b>	January 8, 2021, Hearing Transcript	APP. 0104 – APP. 0112
<b>L</b>	January 26, 2021, Hearing Transcript	APP. 0113 – APP. 0121
<b>M</b>	February 8, 2021, Hearing Transcript	APP. 0122 – APP. 0147
<b>N</b>	February 23, 2021, Hearing Transcript	APP. 0148 – APP. 0155
<b>O</b>	May 10, 2021, Hearing Transcript	APP. 0156 – APP. 0161
<b>P</b>	May 20, 2021, Hearing Transcript	APP. 0162 – APP. 0171
<b>Q</b>	June 8, 2021, Hearing Transcript	APP. 0172 – APP. 0177
<b>R</b>	June 10, 2021, Hearing Transcript	APP. 0178 – APP. 0183
<b>S</b>	June 25, 2021, Hearing Transcript	APP. 0184 – APP. 0189
<b>T</b>	March 1, 2022, Hearing Transcript	APP. 0190 – APP. 0195
<b>U</b>	August 31, 2022, Hearing Transcript	APP. 0196 – APP. 0212
<b>V</b>	September 12, 2022, Hearing Transcript	APP. 0213 – APP. 0239

W	August 4, 2021, Hearing Transcript	APP. 0240 – APP. 0246
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Dated: October 17, 2022

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

/s/ Michael J. Lang

Michael J. Lang  
Texas State Bar No. 24036944  
[mlang@cwl.law](mailto:mlang@cwl.law)  
1700 Pacific Ave, Suite 2390  
Dallas, Texas 75201  
Telephone: (214) 817-4500

*Attorneys for Movants*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 17, 2022, a true and correct copy of the above and foregoing document was served on all parties and counsel set to receive notice by the Court's ECF system.

/s/ Michael J. Lang

Michael J. Lang

# EXHIBIT A

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1 Acis, learned all about Acis' relationship to Highland. But  
2 the real issue before Your Honor is what does that have to do  
3 with this debtor, this debtor's assets and liabilities, and  
4 this debtor's operations. And as my comments will show, we  
5 think that's a significantly overblown argument.

6 Your Honor, during their presentation, Counsel really  
7 strayed a little bit from what the motion and the joinders sort  
8 of said. There they went through a painstaking analysis of the  
9 various factors supporting venue. I know Your Honor said that  
10 over three factors, you don't find that helpful, but the courts  
11 have relied on a series of factors.

12 And I think the reason why they have strayed away from  
13 that and focused on the committee being the one to support the  
14 transfer-of-venue motion and the facts of the Acis case is  
15 because when you pare it down, the actual factors demonstrate  
16 that there is no way the committee can carry its burden to  
17 demonstrate that venue should be transferred.

18 However -- Your Honor pointed to this at the  
19 beginning, in mentioning comments about forum-shopping -- the  
20 committee and Acis are really being disingenuous, and they have  
21 not told you the real reason that they want the case before  
22 Judge Jernigan.

23 At the first-day hearing, Your Honor, Acis said they  
24 intended to file a motion for an appointed trustee. The  
25 committee has told the debtor it intends to file a motion to

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1 appoint a trustee after this hearing. The motion has not yet  
2 been filed, Your Honor, because they want Judge Jernigan to  
3 rule on that motion. And it's not because she's familiar with  
4 this debtor's business, this debtor's assets, or this debtor's  
5 liabilities, because she generally is not. It is because she  
6 formed negative views regarding certain members of the debtor's  
7 management that the committee and Acis hope will carry over to  
8 this case.

9 The convenience of the parties and the interests of  
10 justice and how this case is so unique are just a pretext.  
11 They want a trustee to run the debtor, and they want Judge  
12 Jernigan and not Your Honor to rule on that motion. That, Your  
13 Honor, is not a proper reason to transfer venue, but rather a  
14 transparent litigation ploy.

15 Similarly, Acis also wants the case to proceed in its  
16 home court where it has enjoyed success in litigating against  
17 the debtor. Your Honor mentioned the conflicts-of-interest  
18 theories. They're not just conflicts of interest between two  
19 jointly administered debtors. These go to the crux of what the  
20 Acis case is about and significant claims against the debtor.

21 The Court may ask, appropriately -- and the Court  
22 did -- why would the debtor file the case in Delaware? Chapter  
23 11 is all about a fresh start. The debtor recognized concerns  
24 that the creditors had with certain aspects of its pre-petition  
25 conduct, and proactively appointed Brad Sharp as chief

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1 restructuring officer with expanded powers, to oversee the  
2 debtor's operations.

3 Mr. Sharp worked with the debtor and Counsel to craft  
4 a protocol for transactions that would be subject to increased  
5 transparency. The debtor didn't have to do that. As Your  
6 Honor mentioned at the first-day hearing, the debtor operates  
7 its business in the ordinary course. But given the  
8 circumstances surrounding this case, given the history, we  
9 felt, and the CRO, importantly, felt it was important to get on  
10 the table what the debtor, through the CRO, believed was  
11 ordinary and what was not, so we could have a transparent  
12 discussion, discussion that, while we've made headway with the  
13 committee, we have not yet been able to come to an agreement.

14 The debtor filed the case in this district because it  
15 wanted a judge to preside over this case that would look at  
16 what's going on with this debtor, with this debtor's  
17 management, this debtor's post-petition conduct, without the  
18 baggage of what happened in a previous case, which contrary to  
19 what Acis and the committee says, has very little to do with  
20 this debtor.

21 These form insufficient grounds, Your Honor, to  
22 overturn the debtor's choice of venue, and the motion should be  
23 denied.

24 I would like to now walk through the statutory  
25 analysis, something that Counsel avoided, because again, I

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1 think it highlights the weakness of their argument.

2 It is clear that the Delaware venue is proper, and  
3 1408 says the places where a Chapter 11 debtor can file the  
4 case. As the vast majority of debtors who file cases in this  
5 district, the debtor filed here because it was domiciled in  
6 Delaware. It is a Delaware LP. But it goes further than that.  
7 99.94 percent of its LP interests are owned by Delaware  
8 entities. And the general partner, Strand Advisors, is a  
9 Delaware general partner.

10 While many cases, Your Honor, before this court, rely  
11 on the domicile of one affiliate to bring other non-Delaware  
12 related affiliates before the court, that's not the case here.  
13 All you have, virtually, are Delaware entities, through the  
14 ownership structure.

15 As I will also discuss in a few moments, Your Honor,  
16 domicile is not the only connection that this debtor has to  
17 this district, as significant litigation matters involving the  
18 debtor, including those commenced by committee members, that  
19 was the catalyst to the filing, are pending in Delaware.  
20 Accordingly, the committee acknowledges, as they must, that  
21 Delaware is, of course, a proper venue.

22 However, they rely on 1412 which sets forth the  
23 standard -- test that the movant has to meet in order to  
24 transfer venue, either for the convenience of the parties or  
25 the interest of the justice.

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1 willingness to hire Delaware Counsel.

2 The last argument --

3 THE COURT: Even when you do have mom and -- again, to  
4 comment on reality, even when you do have mom-and-pop creditors  
5 in businesses that are very locally focused, general practice  
6 today is to make their claims irrelevant, in that to the extent  
7 they have avoidance claims, they're paid on the first day.

8 Their real concern is whether the business will continue or  
9 not.

10 Now, it's certainly true that pension claims are  
11 important, and proofs of claim are important. But we have  
12 many -- all courts have many procedures in place to ensure that  
13 those types of creditors can participate without having to go  
14 to the courthouse.

15 MR. POMERANTZ: Yes. So, Your Honor, Judge Gross also  
16 mentioned that in the Restaurants Acquisition case, which was a  
17 Texas-based --

18 THE COURT: He's a smart guy.

19 MR. POMERANTZ: We'll be sorry to see him go, Your  
20 Honor.

21 THE COURT: Yeah, absolutely.

22 MR. POMERANTZ: Which was a Texas-based restaurant  
23 chain that had more of a local flair. But he made the comments  
24 Your Honor made.

25 The last argument the committee makes is that Texas is

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1 more convenient. And this is really the crux, which I'll spend  
2 some time over the next few minutes.

3 Texas is more convenient -- convenient -- because the  
4 Texas bankruptcy court, where Acis is pending has, in their  
5 words, already expended great time and effort familiarizing  
6 itself with the debtor and its operations. You've heard  
7 statements like "learning curve". You heard statements about  
8 everything that the debtor -- that Judge Jernigan has found out  
9 about this debtor, and how important and how helpful it is, and  
10 how Your Honor will be behind the learning curve. We just  
11 don't buy that, Your Honor.

12 And aside from that argument, the arguments that the  
13 committee makes for transfer are arguments that could be made  
14 in any case before Your Honor.

15 THE COURT: Yeah, I was going to say that's kind of an  
16 interesting argument, because actually it assumes Judge  
17 Jernigan's going to ignore the rules of evidence in making  
18 factual findings, because you're limited to the record before  
19 you on a specific motion. And what fact you may have learned  
20 with regard to something a person has done, maybe that goes  
21 into questions of credibility on cross-examination or direct  
22 testimony, but to actually base your decision on a fact that's  
23 not in the record for the specific proceeding would be  
24 improper.

25 MR. POMERANTZ: Look, I agree, Your Honor. And the

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1 familiarity with the type of business -- if I wasn't speaking  
2 to Your Honor or your brethren or many other judges around the  
3 country, I'd say well, maybe there are certain judges who  
4 haven't dealt with large financial services company, may not  
5 know what a CLO, may not know what a hedge fund is or private  
6 equity fund is. I'm very confident that Your Honor has had  
7 many cases with sophisticated financial instruments, likely CLO  
8 obligations, so that Your Honor not only has a good base of  
9 knowledge that would give you the same base of knowledge that  
10 Judge Jernigan has, but as we've also found, you are a fairly  
11 quick study and that I have no doubt that you could come up-to-  
12 speed without very little effort.

13 So their argument is a grossly overstated  
14 interpretation of what the Acis case was about and that what  
15 was learned in that case has any relevance. As a part -- as a  
16 result of the Acis plan confirmation, Acis is no longer part of  
17 the debtor's organizational structure. The debtor owns no  
18 equity in Acis. And the debtor no longer provides any advisory  
19 services to Acis.

20 We admit that Judge Jernigan conducted many hearings,  
21 and she issued several lengthy opinions, and she heard from a  
22 variety of witnesses. And I'm sure Your Honor -- if Your Honor  
23 has not -- Your Honor might read the opinions that she wrote  
24 that are attached to the exhibits, the plan confirmation  
25 opinion, the arbitration opinion, the involuntary opinion; and

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2 C E R T I F I C A T I O N

3

4 I, Clara Rubin, certify that the foregoing transcript is a true  
5 and accurate record of the proceedings.

6

7

8

9



10 December 3, 2019

11

12

CLARA RUBIN

DATE

13

14

eScribers, LLC

15

352 Seventh Avenue, Suite #604

16

New York, NY 10001

17

(973) 406-2250

18

operations@escribers.net

19

20

21

22

23

24

25

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operations@escribers.net | www.escribers.net

APP. 0010  
APP.2842

# EXHIBIT B

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL )  
7 MANAGEMENT, L.P., ) Dallas, Texas  
8 Debtor. ) January 9, 2020  
 ) 9:30 a.m. Docket  
 ) DEBTOR'S MOTION TO COMPROMISE  
 ) CONTROVERSY WITH OFFICIAL  
 ) COMMITTEE OF UNSECURED  
 ) CREDITORS [281]  
 )

9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
11 UNITED STATES BANKRUPTCY JUDGE.

12 APPEARANCES:

13 For the Debtor: Jeffrey N. Pomerantz  
14 PACHULSKI STANG ZIEHL & JONES, LLP  
10100 Santa Monica Blvd.,  
13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

15 For the Debtors: Ira D. Kharasch  
16 PACHULSKI STANG ZIEHL & JONES, LLP  
10100 Santa Monica Blvd.,  
17 13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

18 For the Debtor: John A. Morris  
19 PACHULSKI STANG ZIEHL & JONES, LLP  
780 Third Avenue, 34th Floor  
20 New York, NY 10017-2024  
(212) 561-7700

21 For the Debtors: Melissa S. Hayward  
22 Zachery Z. Annable  
23 HAYWARD & ASSOCIATES, PLLC  
10501 N. Central Expressway,  
24 Suite 106  
Dallas, TX 75231  
(972) 755-7104

1 MS. LAMBERT: Well, I mean, either that or we need to  
2 clear the room.

3 THE COURT: I've read the arbitration award.

4 MS. LAMBERT: Right.

5 THE COURT: It's in my brain.

6 MS. LAMBERT: Right. Okay.

7 THE COURT: Uh-huh.

8 MS. LAMBERT: And so one of the arguments here today  
9 is that the U.S. Trustee is representing the SEC and  
10 representing other Government agencies and things. No.  
11 Obviously, that is not the U.S. Trustee --

12 THE COURT: I didn't hear that.

13 MS. LAMBERT: Okay. The -- one of the positions has  
14 been, in the papers, is, well, that we don't have standing to  
15 raise their issues. And that's true.

16 THE COURT: Okay.

17 MS. LAMBERT: But the problem is that the U.S.  
18 Trustee has been constrained from discussing those issues with  
19 the SEC. The arbitration award is very relevant to the SEC's  
20 oversight. I anticipate the evidence today will be that the  
21 SEC, after the financial crisis of 2008, imposed restrictions  
22 on this Debtor on breach of fiduciary duty issues. I  
23 anticipate that the arbitration findings would be very  
24 relevant to whether those issues are ongoing or not.

25 THE COURT: Okay. Let me weigh in. I view the legal

1 standard that this Court has to weigh today as being: Is the  
2 Debtor proposing something that is reflective of sound  
3 business judgment, reasonable business judgment? And to the  
4 extent this is a compromise of controversies with the  
5 Committee, is this fair and equitable and in the best interest  
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this  
8 maybe doesn't even need Court approval. But to the extent  
9 there are aspects of this that are appropriate to seek Court  
10 approval on, you know, this is my task. I have to look at  
11 what's presented, and is this reflective of sound business  
12 judgment? Is this fair and equitable? Is it in the best  
13 interest?

14 So, assuming there are tons of bad facts here reflected in  
15 the arbitration award, reflected in other evidence, bad facts  
16 that might justify a trustee, a Chapter 11 trustee, is this  
17 nevertheless, what's proposed today, a reasonable compromise  
18 of, you know, the trustee arguments the Committee could make  
19 or, you know, is this a reasonable framework for going  
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you  
22 know, do I need to look at the arbitration award? Do we need  
23 to have evidence of all of that? I can assume that there are  
24 terrible facts out there that might justify a trustee, but I'm  
25 looking at what's proposed. Is this a fair and equitable way

1 to resolve the disputes? Is it sound business judgment?  
2 Frankly, is it a pragmatic solution here to preserve value?  
3 So that's the legal standard I have in my mind here.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. LAMBERT: The standard is whether it is fair and  
7 equitable to resolve the issues in the Chapter 11 trustee  
8 motion, and it is the U.S. Trustee's position that they are  
9 not resolved by this. And how are they not resolved? Number  
10 one, they're not resolved because the problems that led to the  
11 breach of fiduciary duty issues and findings are more  
12 pervasive, both based on this Court's finding in the Acis case  
13 and in the arbitration court's finding in Mr. Dondero. Other  
14 officers are implicated.

15 THE COURT: But how --

16 MS. LAMBERT: Other employees are implicated.

17 THE COURT: Okay. I feel like maybe we're talking at  
18 each other, not getting each other. I've got a proposed  
19 solution here to totally change the playing field, if you  
20 will. Bring in incredibly qualified people to --

21 MS. LAMBERT: Those people --

22 THE COURT: -- to change out the, you know, the  
23 person that you say breached fiduciary duties, the, you know,  
24 mismanagement, whatever bad labels we have here, but bring in  
25 a clean slate.

1 very compelling appeal. Among them, certainly, the Committee  
2 that's negotiated this term sheet retains the right at any  
3 time to move for a Chapter 11 trustee if it believes there are  
4 grounds. The Committee is granted standing to pursue estate  
5 claims, certain estate claims right off the bat, without  
6 having to come back and ask the Court, without having to rely  
7 on the Debtor to pursue that. There are document production  
8 provisions, document preservation provisions, a shared  
9 privilege negotiated, that are very powerful tools for the  
10 Committee, and certainly operating protocols that have been  
11 negotiated regarding the Debtor's operations that are very  
12 powerful tools for the Committee.

13 I said many times during the *Acis* case -- those who were  
14 here will remember -- that the company, *Acis*, was not a great  
15 fit for Chapter 11. Lots of companies aren't great fits for  
16 Chapter 11, I suppose, but the kind of business it was was  
17 kind of tough to maneuver in Chapter 11. Human beings and  
18 their expertise create value. And while we had a Chapter 11  
19 trustee, a stranger come in and take control over *Acis*, you  
20 know, there's great uncertainty whether that stranger is going  
21 to be able to preserve value and have the smooth transition  
22 into Chapter 11 that's really going to be the best fit.

23 Here, as I've said earlier, the legal standard I view as  
24 controlling here is 363 and whether what has been proposed  
25 reflects reasonable business judgment. Is there a sound

1 business justification for proposing the independent slate of  
2 directors at the GP level for the Debtor, the protocols, the  
3 negotiation with the Committee, the document sharing, the  
4 standing given to them? Does all of this reflect reasonable  
5 business judgment? And I find, quite clearly, it does. I  
6 find it to be a pragmatic solution to the Committee's concerns  
7 about existing management and control.

8 And I think I used the words "fair and equitable," not  
9 just Ms. Lambert, because it is also presented to the Court as  
10 a 9019 compromise of disputes with the Committee, and we  
11 traditionally use a fair and equitable and best interest of  
12 the estate analysis in this context. So, to the extent that  
13 applies, I do find this a fair and equitable way of resolving  
14 the disputes with the Committee, and I find this to be in the  
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet  
17 as it's been presented, the various terms therein, the  
18 exhibits thereto. I'm specifically approving the new  
19 independent directors, the document management and  
20 preservation process, the standing to the Committee over  
21 certain of the estate claims, the reporting requirements, the  
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the  
24 role of Mr. Dondero. When Ms. Patel got up and talked about  
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of  
2 the term sheet, the sentence reading, "Mr. Dondero shall not  
3 cause any related entity to terminate any agreements with the  
4 Debtor." Her statement that that was important, it really  
5 resonated with me, because, you know, as I said earlier, I  
6 can't extract what I learned during the *Acis* case, it's in my  
7 brain, and we did have many moments during the *Acis* case where  
8 the Chapter 11 trustee came in and credibly testified that,  
9 whether it was Mr. Dondero personally or others at Highland,  
10 they were surreptitiously liquidating funds, they were  
11 changing agreements, assigning agreements to others. They  
12 were doing things behind the scenes that were impacting the  
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,  
15 but I am going to require that language to be put in the  
16 order. Okay? So we're not just going to have an order  
17 approving the term sheet that has that language. I want  
18 language specifically in the order. You know, you can figure  
19 out where the appropriate place to stick it in the order is,  
20 but I want specific language in here regarding Mr. Dondero's  
21 role. I also -- the language in there that his role as an  
22 employee of the Debtor will be subject at all times to the  
23 supervision, direction, and authority of the Debtors, I want  
24 that language in there as well. Let's go ahead and put the  
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be  
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want  
4 it crystal clear that if he violates these terms, he's  
5 violated a federal court order, and contempt will be one of  
6 the tools available to the Court. He needs to understand  
7 that. Mr. Ellington needs to understand that. You know, if  
8 there are any games behind the scene, not only do I expect the  
9 Committee is going to come in and highlight that to the Court  
10 and file a motion for a trustee or whatever, but we're going  
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski  
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a  
16 clean redline of the order, of course not including the  
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload  
20 and hope to get an order signed by Your Honor today, if you're  
21 around. But to go over the other changes, the changes to  
22 Jefferies, the other language changes I discussed before. I  
23 gave a copy to Ms. Lambert and to the Committee. May I  
24 approach with a --

25 THE COURT: You may.

1 MR. POMERANTZ: Thank you.

2 THE COURT: Okay. All right. (Pause.) All right.

3 The form of order looks fine to me. Obviously, you'll add the  
4 Dondero-related language, and we may have further wording  
5 tweaks negotiated with the CLO Issuers. But, again, I approve  
6 all of this. I didn't say on the record the compensation, but  
7 certainly I am approving that as reasonable. I expect these  
8 three directors are going to be working very, very hard. And  
9 so, as you said, not 50,000-foot level monitoring, actually  
10 rolling up sleeves on-site, so I think the compensation is  
11 reasonable.

12 MR. POMERANTZ: Thank you, Your Honor. We will  
13 submit an order shortly that includes Your Honor's language  
14 requested.

15 THE COURT: Okay.

16 MR. POMERANTZ: Are you around this afternoon?

17 THE COURT: I am around, --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- so just pick up the phone or send an  
20 email to Traci, my courtroom deputy, --

21 MR. POMERANTZ: Yes.

22 THE COURT: -- so she can tell me, "It's in your  
23 queue to sign."

24 MR. POMERANTZ: She has been extremely helpful and  
25 responsive.

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1                   THE COURT: All right. Very good. I'll sign your  
2 order on the CRO, then.

3                   MR. DEMO: Okay. Thank you, Your Honor.

4                   THE COURT: All right. Well, if there's nothing  
5 else, I'll be on the lookout for your orders. And, again, if  
6 you could coordinate with Traci to make sure she's clear on  
7 everything you need set on the 21st.

8                   MR. POMERANTZ: Thank you very much, Your Honor.

9                   THE COURT: All right.

10                  MR. CLEMENTE: Thank you, Your Honor.

11                  MR. DEMO: Thank you, Your Honor.

12                  THE CLERK: All rise.

13                  (Proceedings concluded at 11:54 a.m.)

14                  --oOo--

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CERTIFICATE

21                  I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23                  /s/ **Kathy Rehling**

12/10/2020

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25                  \_\_\_\_\_  
\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

# EXHIBIT C

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 ) **Case No. 19-34054-sgj-11**  
5 In Re: )  
6 )  
7 HIGHLAND CAPITAL ) Dallas, Texas  
8 MANAGEMENT, L.P., ) February 19, 2020  
9 ) 9:30 a.m.  
10 Debtor. )  
11 ) MOTIONS  
12 )  
13 )

14 TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
16 UNITED STATES BANKRUPTCY JUDGE.

17 APPEARANCES:

18 For the Debtor: Greg Demo  
19 John A. Morris  
20 PACHULSKI STANG ZIEHL & JONES, LLP  
21 780 Third Avenue, 34th Floor  
22 New York, NY 10017-2024  
23 (212) 561-7700

24 For the Debtor: Jeffrey N. Pomerantz  
25 PACHULSKI STANG ZIEHL & JONES, LLP  
26 10100 Santa Monica Blvd., 13th  
27 Floor  
28 Los Angeles, CA 90067  
29 (310) 277-6910

30 For the Debtor: Melissa S. Hayward  
31 Zachery Z. Annable  
32 HAYWARD & ASSOCIATES, PLLC  
33 10501 N. Central Expressway,  
34 Suite 106  
35 Dallas, TX 75231  
36 (972) 755-7104

37 For the Official Committee  
38 of Unsecured Creditors: Matthew A. Clemente  
39 SIDLEY AUSTIN, LLP  
40 One South Dearborn Street  
41 Chicago, IL 60603  
42 (312) 853-7539

Nelms - Direct

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1 the original motion but which the Debtor no longer seeks to  
2 pursue?

3 A One of the matters that was pending when we took office  
4 was an appeal, and I believe it was still in the District  
5 Court, and that related to an alleged conflict of interest by  
6 the Winstead firm. And so there was an objection to their  
7 fees and an appeal concerning payment of Winstead fees. And  
8 the Board has decided not to go forward with that appeal.

9 Q Okay. So the Board -- did you hear the opening from  
10 Acis's counsel that charged that the Debtor was just doing  
11 more scorched-earth litigation tactics? Did you hear that  
12 charge?

13 A I heard that, yes.

14 Q Okay. But yet the Board has instructed Foley not to  
15 pursue the Winstead matter; is that right?

16 A That's correct.

17 Q And just again, for the record, why did the Board make  
18 that decision?

19 A The Board made that decision because we just thought it  
20 was in the best interest of the Debtor and this estate not to  
21 do that.

22 Q And did the Debtor see any benefit to pursuing that  
23 particular litigation?

24 A You know, there -- a benefit could be articulated, but we  
25 decided not to pursue it.

Nelms - Direct

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1 Q Okay. So, that, plus the Neutra appeal, are two -- I  
2 mean, I apologize, withdrawn. That, plus the DAF matter, are  
3 two examples where the Board exercised its judgment not to  
4 pursue pending litigation; is that fair?

5 A That's correct.

6 Q Okay. Is the Board supportive of the Debtor's application  
7 to retain Foley for the three matters you have described?

8 A It is.

9 Q And without revealing privileged communications, can you  
10 describe generally the diligence that the Board conducted to  
11 reach that decision?

12 A Well, we met with some of the people that work at  
13 Highland. We met with the Debtor's attorneys, the Pachulski  
14 firm. We did have a couple of meetings with Ms. Patel and Mr.  
15 Terry. Some of us have reviewed the pleadings, some more than  
16 others. And, well, we may have done other things, but those  
17 are the ones that come to mind right now.

18 Q I don't know if you mentioned it, but did you confer with  
19 Ms. O'Neil?

20 A Oh, yes, we did. We talked with Ms. O'Neil about it.

21 Q Okay. And what was the purpose of the diligence that you  
22 just described for the Court?

23 A Well, ultimately, what we as a board were trying to do was  
24 to conduct kind of a cost-benefit analysis to the estate: How  
25 much will this potentially cost us? What's the potential

Nelms - Direct

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1 upside of pursuing it? And based upon that cost-benefit  
2 analysis, we thought that this was the best thing to do.

3 Q Okay. Let's just focus on a couple of very narrow 327(e)  
4 issues. Is the Debtor seeking to retain Foley to act as  
5 general bankruptcy counsel?

6 A No.

7 Q And which firm serves as general bankruptcy counsel?

8 A That would be the Pachulski firm.

9 Q Okay. And do you know whether Foley Gardere represented  
10 the Debtor's interest in each of the three matters that you've  
11 described?

12 A It has been representing the Debtor previously.

13 Q Okay. So let's talk about those three matters. The first  
14 one I believe you said was with respect to the representation  
15 of the Debtor in connection with an \$8 million claim that it  
16 has against Acis; is that right?

17 A That's correct.

18 Q And is that the claim -- is that the subject of a formal  
19 proof of claim?

20 A Yes.

21 Q Okay.

22 A It is a claim filed in the Acis case.

23 Q I've placed before you an exhibit binder, and I would ask  
24 you to turn first to Exhibit 4.

25 A Okay.

1 that benefits everybody.

2 So I guess, Your Honor, I mean, I don't know what else to  
3 say about the benefits of the Neutra appeal except that the  
4 testimony, I think, speaks for itself. But, you know, I --  
5 and in terms of --

6 THE COURT: Again, fight the claim of a creditor.  
7 Foley can represent Highland in the adversary proceeding,  
8 wherever that goes forward.

9 MR. DEMO: Yeah.

10 THE COURT: Probably District Court, not this Court.  
11 At least some of it, if not all of it. But anyway, I'm  
12 digressing. They can object to Acis's proof of claim. They  
13 can object to Terry's proof of claim. I mean, --

14 MR. DEMO: And conversely, Your Honor, if -- if --

15 THE COURT: -- this has nothing to do with -- I mean,  
16 I don't get the appeal. I mean, I --

17 MR. DEMO: Right.

18 THE COURT: Neutra can appeal, HCLOF can appeal, but  
19 I'm not seeing the benefit to Highland.

20 MR. DEMO: And I guess the only thing I would say,  
21 Your Honor, is if there is an improper benefit, we are not  
22 saying that the fee applications are sacrosanct. People can  
23 challenge the improper benefit there.

24 And again, the settlement gave broad discretion to the  
25 Committee to pursue insider claims. So if an insider is

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1 receiving a benefit from this, the Committee has standing to  
2 pursue that.

3 So it's not a null set, Your Honor, whereas cutting off  
4 the appeal now does take away that possibility.

5 THE COURT: How would I be cutting off the appeal?  
6 I'm not cutting off the appeal. King & Spalding can go in  
7 there and fight hard. Foley can go in there and fight hard  
8 for Neutra. So, --

9 MR. DEMO: One second, Your Honor.

10 (Counsel confer.)

11 MR. DEMO: And I guess, you know, Your Honor, and I  
12 do want to reiterate that there is no other party with an  
13 economic incentive to fight the Neutra appeal the way that the  
14 Debtor has an economic incentive.

15 THE COURT: That makes no sense to me. HCLOF is the  
16 one who hated this injunction.

17 MR. DEMO: That's not the Neutra appeal, Your Honor.  
18 That's the confirmation order.

19 THE COURT: Well, okay. Neutra gets its company back  
20 if they win.

21 MR. DEMO: And we would get our contracts back.

22 THE COURT: And arguably, it can control Acis, maybe,  
23 okay, and it can assign management contracts to whoever it  
24 wants. That just -- and it says it'll assign them to  
25 Highland. If you can trust Jim Dondero, then Highland's going

1 to benefit if Neutra wins that appeal. Right?

2 MR. DEMO: Yes. Yes, Your Honor.

3 THE COURT: Okay. So that --

4 MR. DEMO: Highland would benefit greatly --

5 THE COURT: Okay.

6 MR. DEMO: -- if Neutra were to win that appeal.

7 THE COURT: Okay. Okay. Well, but first Neutra  
8 benefits, right? And then --

9 MR. DEMO: No.

10 THE COURT: -- Highland only secondarily benefits --

11 MR. DEMO: I -- I --

12 THE COURT: -- if Jim Dondero keeps his word and  
13 gives the management contracts back to Highland.

14 MR. DEMO: Jim Dondero would also have to repay the  
15 \$8 million in claim, even if he didn't reinstate those  
16 contracts. And that \$8 million would be hundred-cent dollars.

17 THE COURT: Okay.

18 MR. DEMO: So, worst case, --

19 THE COURT: It would have been nice to have him  
20 testify as to all of this.

21 MR. DEMO: Worst --

22 THE COURT: It would be more compelling if I had him.

23 MR. DEMO: Well, --

24 THE COURT: Okay? But I don't think --

25 MR. DEMO: -- I can only do so much, Your Honor.

1                   THE COURT: -- that's going to happen anytime soon.

2                   MR. DEMO: But I guess worst-case scenario is that  
3 it's \$8 million in hundred-cent dollars.

4                   THE COURT: Okay.

5                   MR. DEMO: And that's not nothing for \$500,000. And  
6 only a portion of that \$500,000.

7                   THE COURT: Okay.

8                   MR. DEMO: Thank you, Your Honor.

9                   THE COURT: Okay. Mr. Lamberson?

10                  MR. LAMBERSON: Your Honor, do you want a closing  
11 from me? Or no?

12                  THE COURT: I don't really need it. Thank you.

13                  MR. LAMBERSON: Okay.

14                  THE COURT: Okay.

15                  MR. LAMBERSON: Because I know your hearing starts in  
16 about two minutes.

17                  THE COURT: All right. So, I just hate it that we  
18 spent so much time on this. I hate it that we spent so much  
19 time, but, I mean, I understand. I understand. You know, I  
20 think the employment application was filed pretty early in the  
21 case, right, and -- October 29th. And it was continued,  
22 continued, continued, because we were getting objections from  
23 the Committee, or they wanted time to look at it, I guess.  
24 And now you're kind of up against the wire, right, because  
25 oral arguments are set at the Fifth Circuit next month. So I,

1 you know, I hate it that we were here, but I understand it.

2 But I'm concerned. I'm concerned -- well, here's the  
3 deal. We have a great board, and I totally get that  
4 Bankruptcy Courts should defer heavily to the reasonable  
5 exercise of business judgment by a board. And we've got great  
6 professionals. And we've got this case, I think, on a good  
7 track as a general matter now. But I'm concerned that Dondero  
8 or certain in-house counsel has -- you know, they're smart,  
9 they're persuasive -- that -- what are the words I want to  
10 look for -- they have exercised their powers of persuasion or  
11 whatever to make the Board and the professionals think that  
12 there is some valid prospect of benefit to Highland with these  
13 appeals, when it's really all about Neutra, HCLOF, and Mr.  
14 Dondero. That's what I believe.

15 I mean, this is awkward, right, because you want to defer  
16 to the debtor-in-possession, but I have this long history, and  
17 I can think through the scenarios. If this is reversed, here  
18 is how it will play out. If this is reversed, here is how it  
19 might play out. And I know, you know, there are multiple ways  
20 it might play out, but I cannot believe there is a chance in  
21 the world there is economic benefit to Highland if these  
22 things get reversed. Economic benefit to Neutra: Yeah,  
23 maybe. Economic benefit to HCLOF: Well, they'll get what  
24 they want. You know, whether it's an economic benefit, I  
25 don't know. But benefit to Highland? I just don't think the

1 evidence has been there to convince me it's reasonable  
2 business judgment for Highland to pay the legal fees  
3 associated with the appeal.

4 And even more concerning to me is a valid point was made  
5 that Highland is in bankruptcy because of litigation,  
6 litigation, litigation. The past officers and directors and  
7 controls' propensity to fight about everything. This isn't a  
8 balance sheet restructuring, okay? It's not a Chapter 11  
9 caused by operational problems or revenue disruption or who  
10 knows what kind of disruption. It's about years of litigation  
11 finally coming home to roost. And this just appears to be  
12 more of the same, potentially.

13 Okay. Parties have a right to appeal. I respect that.  
14 Neutra, go for it. HCLOF, go for it. But this estate and its  
15 creditors should not bear the burden of having Highland pay  
16 for that, when, again, I don't think there's any evidence to  
17 suggest they could benefit at the end of the day.

18 So what I'm going to do is I'm going to approve the  
19 retention of Foley to represent Highland in the Acis case. We  
20 all know the adversary is stayed right now. It may or may not  
21 ever be un-stayed, depending on what strategies people want to  
22 pursue. But Highland, I think a meritorious case has been  
23 presented, and under 327(e) I will approve Foley representing  
24 Highland in all Acis matters. Okay? The Acis bankruptcy  
25 case. The adversary proceeding, if it goes forward. And so

1 that's my ruling.

2 I will additionally rule, for the avoidance of doubt, that  
3 if Foley wants to represent Neutra in the appeals and get paid  
4 by Neutra, I don't have any problem with that. In other  
5 words, I'm not going to find something like there's a conflict  
6 with the estate, you know, because of its simultaneous  
7 representation of Neutra. That's fine. But I'm not going to  
8 approve Highland paying anything in connection with either of  
9 those appeals. So that is the ruling of the Court.

10 Have I left any gaps here?

11 MR. DEMO: Your Honor, just one clarification.

12 THE COURT: Uh-huh.

13 MR. DEMO: Foley is representing Highland Capital  
14 Management in the appeal of the confirmation order to the  
15 Fifth Circuit. I just want to clarify that your ruling that  
16 Highland can represent -- I'm sorry -- Foley can represent  
17 Highland in all Acis matters extends to their representation  
18 of Highland Capital Management in the appeal of the  
19 confirmation order that's set for March 30th.

20 THE COURT: Okay. Let me think through that.

21 MR. DEMO: And again, Your Honor, there's been no  
22 objection to that.

23 THE COURT: King & Spalding is in there representing  
24 HCLOF. Foley would be representing both Neutra and Highland  
25 in connection with the confirmation order?

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1 THE COURT: Okay. Thank you all.

2 (Proceedings concluded at 1:44 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 /s/ **Kathy Rehling**

02/20/2020

24

---

25 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

# EXHIBIT D

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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 ) **Case No. 19-34054-sgj11**  
5 In Re: )  
6 )  
7 HIGHLAND CAPITAL ) Dallas, Texas  
8 MANAGEMENT, L.P., ) June 30, 2020  
9 ) 9:30 a.m. Docket  
10 Debtor. )  
11 ) MOTION FOR REMITTANCE OF FUNDS  
12 ) HELD IN REGISTRY OF COURT  
13 ) FILED BY CLO HOLDCO, LTD.  
14 ) (590)  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
11 UNITED STATES BANKRUPTCY JUDGE.

12 WEBEX/TELEPHONIC APPEARANCES:

13 For the Debtor: Jeffrey N. Pomerantz  
14 ) PACHULSKI STANG ZIEHL & JONES, LLP  
15 ) 10100 Santa Monica Blvd.,  
16 ) 13th Floor  
17 ) Los Angeles, CA 90067  
18 ) (310) 277-6910  
19 For the Debtor: John A. Morris  
20 ) Greg Demo  
21 ) PACHULSKI STANG ZIEHL & JONES, LLP  
22 ) 780 Third Avenue, 34th Floor  
23 ) New York, NY 10017-2024  
24 ) (212) 561-7700  
25 For CLO Holdco, Ltd., John J. Kane  
Movant: Brian W. Clark  
KANE RUSSELL COLEMAN LOGAN, P.C.  
901 Main Street, Suite 5200  
Dallas, TX 75202  
(214) 777-4261  
For the Official Committee Matthew A. Clemente  
of Unsecured Creditors: SIDLEY AUSTIN, LLP  
One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7539

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1 the argument that you can't look at the Bankruptcy Code to  
2 determine whether the money should come out of the registry or  
3 not, and then be back in front of you, you know, three or four  
4 weeks later to relitigate any of those issues.

5 So that was absolutely my recollection and understanding,  
6 Your Honor, and I think from your comments I intuit that it  
7 was your understanding as well, that this was not something  
8 that we were going to deal with again very quickly, but was  
9 something to preserve the status quo, a reasonable solution,  
10 an equitable solution under Section 105. And I believe that's  
11 what Your Honor ordered.

12 THE COURT: All right. Well, I'll let you go ahead  
13 and make your opening statement. I think Mr. Kane was  
14 finished before I started asking my questions.

15 MR. CLEMENTE: Okay.

16 THE COURT: Mr. Clemente, you may proceed.

17 MR. CLEMENTE: Thank you, Your Honor. I appreciate  
18 that. So, and I'll try and be brief on the opening.

19 OPENING STATEMENT ON BEHALF OF THE OFFICIAL COMMITTEE OF  
20 UNSECURED CREDITORS

21 MR. CLEMENTE: Your Honor, like it or not, CLO Holdco  
22 is not an independent, unrelated, third-party investor merely  
23 seeking distributions on account of its own arm's-length  
24 independent investments. Instead, CLO is a related party in  
25 literally every sense of the word. That's not in dispute.

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1 That is part of the Jim Dondero or Mr. Dondero web of  
2 entities.

3 CLO Holdco is effectively controlled by Mr. Dondero. It  
4 was seeded and received assets transferred from the Debtor,  
5 including the assets giving rise to the distribution that's in  
6 the registry. None of that is in dispute. All of this at a  
7 time when Mr. Dondero controlled the Debtor as well as the  
8 parties through the various intermediate transactions that  
9 ultimately resulted in the assets arriving in CLO Holdco.

10 That is not in dispute.

11 Mr. Dondero's past fraudulent conduct, including  
12 fraudulent transfers, is also not in dispute. He was on all  
13 sides of this transaction. And therefore this transaction,  
14 along with many of the others, must be viewed with skepticism  
15 and scrutinized very closely by the Committee and by this  
16 Court.

17 The Committee has only just begun such work, Your Honor.  
18 And given the Byzantine empire created by Mr. Dondero, it will  
19 take time and significant resources to fully and properly  
20 conduct an investigation.

21 And Mr. Kane referred to, did we do discovery? We did  
22 not. Our reaction to this motion was the same as Your Honor.  
23 And as you can see by the stipulations that we have agreed to  
24 for purposes of this hearing, we didn't want this to be a  
25 situation where the estate would spend a tremendous amount of

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1 resources to deal with something that we thought that was  
2 dealt with on March 4th.

3 But aside from that, given the web that's been created  
4 here, we can't just isolate one piece of it. We can't just be  
5 like, I'm going to look at the CLO Holdco documents and be  
6 able to develop a full theory. This is a tapestry of  
7 interrelated entities that is opaque and vague and purposely  
8 so. So you can't just focus on one piece and then try and  
9 say, well, I know what this piece is, because that piece has  
10 many interrelated complex ramifications and relationships  
11 where, frankly, you can't just say, okay, let's focus on this  
12 one issue, because you're going to miss the entire tapestry.

13 We still need to examine, as I mentioned, the whole thing,  
14 and this takes time and it takes an investment. So while I  
15 understand CLO Holdco wants to receive its distribution, I  
16 also understand that my constituency wants to be paid, some of  
17 whom have been waiting for over a decade.

18 To be clear, Your Honor, my constituency didn't choose to  
19 be here in the bankruptcy. But CLO Holdco chose to associate  
20 itself with Mr. Dondero and to take assets from Highland in  
21 convoluted related-party transactions and reap the benefits of  
22 those transactions. CLO Holdco can't now step away from that  
23 and try and suggest to Your Honor that this is about taking  
24 time under 28 U.S.C. 2042. That was never what it was about  
25 on March 4th, and it's not what it's about today.

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1 Holdco has or doesn't have, we have no idea. And it's  
2 controlled, ultimately, let us not lose sight of the fact, by  
3 Mr. Dondero.

4 So, allowing CLO Holdco to take distributions will place  
5 them with an offshore entity, potentially outside the  
6 jurisdiction of this Court, or at the very least, placed in  
7 five or six entities removed or who knows where, including  
8 potentially other foreign entities.

9 Therefore, exercising authority under Section 105 is  
10 consistent with preserving, protecting, and maximizing the  
11 value of the Debtor's estate, which estate includes claims,  
12 causes of action, and avoidance actions.

13 As you know, 105 is the means and -- circumstances (audio  
14 gap) preserve and protect the estate.

15 And to be sure, this is not inconsistent with any other  
16 provision of the Bankruptcy Code, and it's, in fact, from our  
17 perspective, in furtherance of the goals of the Code.

18 Your Honor, regarding the payments that Mr. Kane (audio  
19 gap), the fact that a few payments were made on the note  
20 doesn't change the fact that Section 105 applies and the Court  
21 should deny the motion.

22 As with all that is Highland, nothing is simple or easy.  
23 First, CLO Holdco received millions more in assets and  
24 transfers, aside from the interests giving rise to the  
25 distributions at issue. So the fact that there were payments

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1 on the notes really speak nothing to the fact of whether the  
2 overall transaction was for reasonably equivalent value or  
3 otherwise problematic, especially when there is nothing in the  
4 record regarding the Dugaboy Trust, its wherewithal to pay, or  
5 the fairness of the terms of the note, or any of that. Or why  
6 the note was structured this way or, you know, what the Get  
7 Good Trust and the Dugaboy Trust do, how they interact, who  
8 makes decision on what gets paid and doesn't get paid.

9 The few payments, while interesting, Your Honor, again, do  
10 not establish reasonably equivalent value or the propriety, in  
11 our view, of the transfers.

12 Finally, as this Court knows, reasonably equivalent value  
13 is not determinative of whether the transfer was intentionally  
14 fraudulent or otherwise potentially avoidable or problematic.  
15 So, while deeds are interesting, Your Honor, I would submit  
16 that they don't move the needle in changing the fact that the  
17 motion should be denied.

18 Now, Your Honor, to the point that you raised with me  
19 before I started my remarks here. Much has been made about  
20 inappropriate prejudgment remedy or attachment or similar  
21 arguments. I submit this case is moot, Your Honor. Again, at  
22 the risk of repeating myself, I will emphasize that CLO Holdco  
23 is not an independent third party. Like it or not, it is tied  
24 up in a ruinous web with Mr. Dondero, and that in and of  
25 itself makes this case unique and distinguishes it from the

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1 other cases cited by CLO Holdco.

2 Additionally, Your Honor, the current circumstances are  
3 distinguishable because the Debtor had control over these  
4 funds. That's why we were in front of you on March 4th. I  
5 agree, and I'm not arguing, that the Debtor did not own these  
6 funds. But it clearly had control over them at the time that  
7 it sought to make the distributions on March 4th. So, in my  
8 humble opinion, Your Honor, that means the Court had control  
9 over that.

10 Having them held in a registry while an investigation  
11 occurs is not akin to slapping a lien on someone's house or  
12 taking possession of an automobile, like the cases cited by  
13 Mr. Kane where they require there's some -- an adversary  
14 proceeding or some type of complaint.

15 The situation here, again, Your Honor, matters. The  
16 Debtor was before you seeking your authority to make this  
17 distribution. That is entirely different than if I were to  
18 walk in here and say my colleague, Mr. Twomey, I think that,  
19 you know what, I don't like him and so I have a claim against  
20 him, and I want Your Honor to enjoin him from being able to  
21 sell his automobile. That is entirely different, and in my  
22 view completely distinguishes it from any of the cases that  
23 Mr. Kane cited, including, of course, I have much respect for  
24 Judge Houser, but including the case authored by Judge Houser.

25 So, Your Honor, again, having them held in the registry is

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1 attachment. Bankruptcy Rules aren't structured like that.

2 But importantly, Mr. Clemente presented no facts to  
3 support his balancing of harms argument and presented no facts  
4 to establish that he has any viable claims against CLO Holdco.  
5 Arguments that James Dondero participated in frauds does not  
6 mean that there's a claim or cause of action that the  
7 Committee can assert against CLO Holdco, which is what would  
8 be required to obtain an injunction.

9 This is a big if. If the Committee is seeking to obtain  
10 an injunction, it must satisfy its burden of proving under  
11 7065 and the four-factor test established by *Janvey v. Alguire*  
12 in the Fifth Circuit in 2011 and the many cases before that.  
13 And it just can't do it.

14 So I want to leave the Court with one case citation,  
15 because if the Court is considering some means of entering a  
16 preliminary injunction outside of an adversary proceeding, I  
17 was able to find a grand total of one case that address that  
18 in the Fifth Circuit. And that is the 1995 decision of *In re*  
19 *Zale* in which the Fifth Circuit noted that the only way a  
20 105(a) preliminary injunction could be issued, after a finding  
21 of these unusual circumstances and the like, was if all of the  
22 protections of an adversary proceeding had been afforded to  
23 the non-movant and if the party that was requesting the  
24 injunction satisfied the four-factor test that's found in  
25 7065.

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1       There are no extraordinary circumstances or unusual  
2 circumstances here. And if this Court believes that the  
3 context of this case warrants that, then the Committee would  
4 still have to satisfy that four-factor test for a preliminary  
5 injunction. And it has the burden of proof on those four  
6 factors. It hasn't presented any evidence whatsoever to  
7 support that it can meet the first, let alone the second,  
8 third, and fourth factors of that test.

9           So, Your Honor, with that, I'll close our case, unless you  
10 have additional questions, and request that the Court grant  
11 CLO Holdco's motion.

12           THE COURT: A couple of follow-up questions. I have  
13 certain facts in my brain, and I can't remember if they're in  
14 evidence or stipulated to or I read them in a pleading. So, I  
15 just want to ask: Somewhere I remember seeing that CLO  
16 Holdco, or, you know, maybe it's its parent, I think -- Mr.  
17 Clemente said we have a Byzantine structure here and we have a  
18 sub-web within a bigger web with regard to CLO Holdco. But,  
19 anyway, CLO Holdco or its parent has assets of approximately  
20 \$225 million? Is that evidence or undisputed?

21           MR. KANE: Your Honor, that was contained in one of  
22 the pleadings asserted, I believe, by the Committee, and that  
23 was the Charitable DAF entities, not necessarily CLO Holdco.  
24 There hasn't been any evidence presented by the Committee of  
25 the assets held by CLO Holdco other than what we have before

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1 the Court.

2 THE COURT: Okay. So it's not something you would  
3 stipulate or offer one way or another?

4 MR. KANE: No, Your Honor, I think that's factually  
5 incorrect and I don't stipulate to that.

6 THE COURT: Okay. I think my notes show that that  
7 was the alleged amount of assets as of September 30, 2019.  
8 But, again, that may have just been a pleading, not anything  
9 in evidence.

10 All right. And are Mr. Scott or Mr. Dondero on the phone  
11 today or on the video? I'm just curious.

12 MR. KANE: Your Honor, I lost you on the video a  
13 little bit, but assuming you can hear me, though, Mr. Scott is  
14 not. We had conversations with the Committee about various  
15 exhibits and whether or not Mr. Scott would be here to testify  
16 to prove up exhibits. Once the exhibits were all stipulated  
17 as admissible, then there was no need for Mr. Scott to  
18 participate.

19 THE COURT: Okay. I was not going to ask him  
20 anything. I just was curious if he was listening in. Or Mr.  
21 Dondero, for that matter. I guess Mr. Dondero is not on the  
22 line, correct? (Pause.) All right. I'll --

23 MR. KANE: Your Honor, I -- I think -- I'm sorry.  
24 I've had no conversations with Mr. Dondero. I have no idea  
25 whether he's on the line.

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1                   THE COURT: Okay. I'll take silence to mean he's  
2 probably not, but --

3                   All right. I asked that question for, I guess, a couple  
4 of reasons. But the main reason I asked is -- and I'm going  
5 to say this as kindly as I can. They're not here to hear it  
6 anyway. But I feel like perhaps they are a little tone deaf,  
7 for lack of a better term, on how this all looks to the Court  
8 today. And what I mean by that is, obviously, I assume it was  
9 their decision to bring this motion, at least Mr. Scott's, and  
10 likely Mr. Dondero as well had some involvement in that  
11 decision. And the reason I say that it feels like they're a  
12 little tone deaf about how this looks is that we just had an  
13 extensive hearing and some very thorough pleadings, a lot of  
14 evidence uploaded, on a \$2.5 million issue. And I don't --  
15 you know, I appreciate that that is a significant sum of  
16 money, but we've used the word context a lot this morning: In  
17 the context of this reorganization, it seems like a very big  
18 deal was raised here, at the choice of Mr. Scott and Mr.  
19 Dondero, over a \$2.5 million issue, in the context of a  
20 reorganization that involves at least hundreds of millions of  
21 dollars of debt, if not over a billion. UBS says they're owed  
22 a billion.

23                   And I just asked my question a minute ago about the value  
24 of assets that the DAF or CLO Holdco or that sub-structure has  
25 managed, because while no one will commit, is it \$225 million

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1 or not, you know, I take it that the Committee had a good  
2 faith basis for saying that, and if it's not that, it's  
3 probably a quite sizable number.

4 Again, so I'm kind of thinking out loud about the  
5 proportionality of this issue. \$2.5 million, not anything to  
6 sneeze at, but we're talking about a Charitable DAF that  
7 probably has many, many, many more times that of assets. And  
8 so there was certainly no equitable argument of hardship or,  
9 you know, significant detriment that's befalling CLO Holdco by  
10 the tying up of this money in the registry of the Court for  
11 this relatively short time period. So, again, it feels a  
12 little tone deaf to be bringing this argument, occupying so  
13 much time from the parties, the lawyers, the Court, over this  
14 issue.

15 And just to further elaborate on that, it matters to me,  
16 and I say this about the tone-deafness, partly because I  
17 thought -- I said this at the beginning of the hearing, and I  
18 still say it -- we already put this issue to rest, albeit  
19 temporarily, in March. And in April, we get this new motion.  
20 Again, I recognize the language of the March order reserved  
21 everyone's rights to come back and argue about this, but,  
22 again, the buzzwords for this hearing are going to be context  
23 matters, I guess. Mr. Clemente, you get credit for that buzz  
24 phrase, those buzzwords.

25 Again, I issued the order with regard to putting these

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1 monies in the registry of the Court at the suggestion of Mr.  
2 Dondero's very wonderful lawyer, retired Judge Lynn. And,  
3 again, the context was we had a protocol order early in this  
4 case that the Committee negotiated heavily with regard to  
5 monies being disbursed out under the control of the Debtor,  
6 and heavily negotiated. I remember the CLO Issuers, I think,  
7 had some pause and concerns and got their language into that  
8 order.

9 So we had this protocol order. Debtor was worried about  
10 violating the protocol order, so Debtor files the motion  
11 February 24th, wanting the blessing of a court order before it  
12 transferred these monies to CLO Holdco and some other  
13 Highland-affiliated entities. There were vehement objections,  
14 and the Court issued the order saying, Let's put these monies  
15 into the registry of the Court, at the suggestion of very able  
16 counsel as to how we could resolve that contested matter we  
17 were there on on March 4th.

18 So, you know, a month later, April, we have this new  
19 motion of CLO Holdco reviving the dispute, the \$2.5 million  
20 dispute that we had just put to rest temporarily in March at  
21 the suggestion of lawyers. I didn't issue a 105 injunction  
22 outside the context of an adversary proceeding just on my own,  
23 *sua sponte*. It was suggested to me that this was a good  
24 solution. People embraced it. That's what we did. And I  
25 sure didn't have in my brain that a month later we'd have a

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1 brand new motion regarding whether these monies should be  
2 disbursed to CLO Holdco all over again, when that was the  
3 issue that was already before the Court in March.

4 I, again, fully recognize that everybody reserved their  
5 rights, but I focus on this context because, again, I wish Mr.  
6 Dondero and Mr. Scott were on the call to hear this: This  
7 almost feels like a good faith issue to me. You know, maybe I  
8 would feel slightly different if there had been a broad  
9 emphasis, heavy emphasis, CLO Holdco standing up through a  
10 lawyer that day saying, We're just letting you know, we're  
11 going to get together a motion in very short order and tee  
12 this up again. Because I would have probably said no. You  
13 know, if -- let's just hear it right now today, if this is  
14 only a three-week mandate or whatever. So, good faith is  
15 something that I can't help but scratch my head and be  
16 troubled by.

17 So, I want to emphasize that CLO Holdco's lawyer has made  
18 perfect arguments regarding the potential legal issues here.  
19 There are some valid arguments here about is this tantamount,  
20 holding the money in the registry of the Court that a non-  
21 debtor asserts is its property, is that tantamount to a  
22 prejudgment remedy? You know, did it require an adversary  
23 proceeding? Did it require the traditional four-prong prove-  
24 up for a preliminary injunction? And did the Court just give  
25 short shrift to those legal technicalities?

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1       Again, these are compelling arguments, but I'm overruling  
2 the arguments because, again, I believe it ignores the context  
3 that CLO Holdco essentially consented, acquiesced, in this  
4 placeholder keep-the-status-quo solution. And I question its  
5 good faith in, so quickly after consenting, bringing this  
6 motion.

7       But moreover, I do find that in the unique context of the  
8 disputes before the Court on March 4th, I did have authority  
9 to issue a 105 injunction. 105, as we all know, at Subsection  
10 (a) gives a bankruptcy court authority to issue orders  
11 necessary or appropriate to carry out provisions of Title 11,  
12 and the last sentence even provides a mechanism for the Court  
13 to *sua sponte* take action to, among other things, prevent an  
14 abuse of process or just do what's necessary or appropriate to  
15 implement court orders or rules.

16       So I think, again, in the context before the Court, it was  
17 not only a consensual thing, but the Court had authority. And  
18 the backdrop of this, again, cannot be overstated. Again, to  
19 use Mr. Clemente's word, we have this Byzantine structure  
20 here. It's a lot for the Committee to get its arms around.  
21 And even the CLO Holdco structure -- again, I'm looking at my  
22 notes, my fancy chart -- we have CLO Holdco, a Cayman Island  
23 entity. Its parent is Charitable DAF Fund, LP, another Cayman  
24 Island entity. It, in turn, is owned by Charitable DAF  
25 Holdco, Ltd., yet another Cayman Island entity. Its general

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1 partner happens to be a Delaware entity, Charitable DAF GP,  
2 LLC, but the beneficial owners of it are the three Highland  
3 Foundations, of which Dondero is president and director, and  
4 Mr. Scott the treasurer and director.

5 So, I'm not saying the Byzantine structure is in and of  
6 itself problematic, although one might wonder why a charitable  
7 organization needs to have three offshore entities as part of  
8 its structure. I digress. But we all know a Byzantine  
9 structure and ties to Dondero do not mean something is  
10 attackable in and of itself, but we have had issues raised  
11 about the Dynamic Fund and the various transfers with regard  
12 to Dugaboy, the Dondero Family Trust, and Get Good Trust and  
13 the note. All of that is worthy of examination, and the  
14 Committee has not had all that long in this case to  
15 investigate it.

16 So, I'm going to say a couple of more things. First, the  
17 motion is denied, but I'm going to put more strings on it than  
18 that. I'm denying the motion, but as part of this ruling I'm  
19 going to order that the Committee has 90 days, unless the  
20 Court happens to extend that on motion or agreement of the  
21 parties, to file an adversary proceeding against CLO Holdco or  
22 the money shall be released. Okay?

23 So, again, I intended it, as I think everybody did, to be  
24 a placeholder, to keep the status quo little bit. Again, Mr.  
25 Kane has raised good arguments that maybe an adversary

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1 conceivably was necessary or might become necessary. So here  
2 we have a requirement of an adversary within 90 days or the  
3 money shall be released to Holdco -- again, unless someone  
4 moves to extend that or I get an agreement to extend that and  
5 I happen to decide to issue an order extending that.

6 I presume that if an adversary is filed, then if the  
7 Committee wants that money to continue to be held in the  
8 registry of the Court, then they would have to file an  
9 application for injunctive relief, essentially, to keep the  
10 money in the registry of the Court pending the resolution of  
11 the adversary proceeding.

12 So that is the ruling of the Court. Mr. Clemente, I'll  
13 ask you to draft up the order. And I reserve the right to  
14 supplement this oral ruling in that form of order. And please  
15 run it by Mr. Kane before electronically submitting it to the  
16 Court.

17 Now, I'm going to say a couple of other things, and then  
18 I'll, before closing, I'll ask if there are questions or other  
19 announcements. I have told the parties and the lawyers to  
20 focus on a plan and problem-solving how we're going to pay  
21 creditors. And I think I expressed my strong hope that people  
22 would stop litigating everything. I think I'm remembering  
23 saying this most recently at the UBS hearing a few weeks ago  
24 on a motion to lift stay. Once again, we had a very lengthy  
25 hearing that day. I denied the motion. And here we are

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1 as I can to distance CLO Holdco from that taint, because  
2 understanding that it's in what has been alleged as a  
3 Byzantine web, we think it's important to separate CLO Holdco  
4 and its operations to ensure that things are done in an  
5 appropriate fashion with square corners.

6 That's all I have, Your Honor. We have no objection to  
7 the additional funds being pled into the registry of the  
8 Court. We can agree those funds would be adjudicated as part  
9 of this dispute. We understand that we did not prevail, and  
10 we appreciate your Court hearing our argument.

11 (Proceedings concluded at 12:06 p.m.)

12 --oOo--

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CERTIFICATE

20 I certify that the foregoing is a correct transcript to  
the best of my ability from the electronic sound recording of  
21 the proceedings in the above-entitled matter.

22 /s/ **Kathy Rehling**

07/02/2020

23 \_\_\_\_\_  
24 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

25 \_\_\_\_\_  
Date

# EXHIBIT E

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj11**  
5 )  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) July 8, 2020  
8 ) 1:30 p.m. Docket  
Debtor. )  
 ) - MOTION TO EXTEND EXCLUSIVITY  
 ) PERIOD (737)  
 ) - MOTION TO EXTEND TIME TO  
 ) REMOVE ACTIONS (747)  
8 )

9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
11 UNITED STATES BANKRUPTCY JUDGE.

12 WEBEX/TELEPHONIC APPEARANCES:

13 For the Debtor: Jeffrey N. Pomerantz  
14 ) PACHULSKI STANG ZIEHL & JONES, LLP  
15 ) 10100 Santa Monica Blvd.,  
16 ) 13th Floor  
17 ) Los Angeles, CA 90067  
18 ) (310) 277-6910  
19 For the Official Committee Matthew A. Clemente  
20 of Unsecured Creditors: SIDLEY AUSTIN, LLP  
21 ) One South Dearborn Street  
22 ) Chicago, IL 60603  
23 ) (312) 853-7539  
24 For the Debtor: Zachery Z. Annable  
25 ) Melissa S. Hayward  
26 ) HAYWARD & ASSOCIATES, PLLC  
27 ) 10501 N. Central Expressway,  
28 ) Suite 106  
29 ) Dallas, TX 75231  
30 ) (972) 755-7104  
31 For Acis Capital Rakhee V. Patel  
32 Management GP, LLC: Annmarie Antoinette Chiarello  
33 ) WINSTEAD, P.C.  
34 ) 2728 N. Harwood Street, Suite 500  
35 ) Dallas, TX 75201  
36 ) (214) 745-5250

1 been working very cooperatively with our creditors over the  
2 last few months and we're just seeking to do it the best way.

3 So nothing I've said today, nothing, you know, should come  
4 as and will come as a surprise to the Committee, but we're  
5 working better, recognizing that ultimately the creditors want  
6 to be paid, and doing that in an appropriate manner and a  
7 thoughtful manner is what the Debtor is committed to do with  
8 its partner, the Committee, in this process.

9 THE COURT: Okay. Sort of jumping back, I forgot to  
10 ask earlier when we were talking about Acis: Has the Fifth  
11 Circuit rescheduled oral argument on the appeal of the Acis  
12 confirmation order and order for relief?

13 MR. POMERANTZ: I believe -- Your Honor, maybe Ms.  
14 Patel would know off the top of her head.

15 THE COURT: Ms. Patel?

16 MS. PATEL: Your Honor, it was -- it was briefly -- I  
17 -- and I say briefly, it was briefly we had -- we got a notice  
18 at some point, I believe in early June, that the Fifth Circuit  
19 had reset oral argument. And then approximately, I can't  
20 remember exactly, but it was like, I don't know, a week or  
21 maybe ten days later, we got a notice that it was cancelled  
22 again. We have not received notice that it is rescheduled, so  
23 it is still pending. But it has not been taken off oral -- it  
24 has not been taken off oral argument at some juncture.

25 THE COURT: Okay. Well, I acknowledge that that is a

1 pandemic disruption for sure. It would have been nice to have  
2 that resolved one way or another by now.

3 MS. PATEL: Agreed, Your Honor. We were trying to  
4 figure out, frankly, in the week to ten days that it took from  
5 the scheduling to how it was cancelled, exactly how our team  
6 was going to get down to New Orleans. And the -- I think the  
7 leading contender was to rent an RV and drive down so we could  
8 safely get there. So it certainly has been a casualty of the  
9 pandemic.

10 THE COURT: Okay. All right. Two more questions.  
11 And this one has been a bit of a tough one for me to decide  
12 whether I should broach this topic or not. You know, I read  
13 the newspapers, the financial papers, just like everyone else,  
14 and I saw a headline that I wished almost I wouldn't have  
15 seen, and it was a headline about Dondero or Highland  
16 affiliates getting three PPP loans. And, you know, I'm only  
17 supposed to consider evidence I hear in the courtroom, right,  
18 or things I hear in the courtroom, but I've got this  
19 extrajudicial knowledge right now thanks to just keeping up on  
20 current events. I decided I needed to ask about this.

21 What can you tell me about this, Mr. Pomerantz? I mean, I  
22 assumed, from less-than-clear reporting, that it wasn't  
23 Highland Capital Management, LP, but I'd like to hear anything  
24 you can report about this.

25 MR. POMERANTZ: So, look, Your Honor, the first I

1 could say is that, to my knowledge, Highland Capital, the  
2 Debtor, has not obtained a PPP loan. I know there have been  
3 discussions with certain funds that basically have certain  
4 assets, private operating companies, about obtaining PPP  
5 loans. I don't have the specifics for Your Honor. I'm happy  
6 to provide that.

7 Of course, to the extent Mr. Dondero, on any of his  
8 affiliated funds that are under the control of the Debtor, I  
9 would have no way of answering that, but I'm happy to follow  
10 up with that with the Board and report back to Your Honor in  
11 whatever appropriate manner you felt to obtain that  
12 information.

13 THE COURT: Okay. Well, let's have a report on that  
14 on the 14th when we come in. You know, maybe Mr. Seery or Mr.  
15 Sharp or some other person. But you can probably imagine the  
16 different things going through my brain. You know, well,  
17 first, let's see if it was -- you know, I don't -- again, I'm  
18 not expecting it to be Highland Capital Management, LP. I  
19 would be beyond shocked if, you know, that somehow happened  
20 when they're in bankruptcy. And, you know, I think it would  
21 require a 364 motion, just like any other borrowing, although  
22 I know it's kind of a forgivable loan. Strange bird.

23 But then if it's some affiliate of Highland, I still feel  
24 like we need some transparency and disclosure on that. I  
25 mean, I -- and who were the human beings behind it. It just

45

1       busiest judges in the country right now. I'm wondering when  
2       were they contacted. Was it really recently, or a week or two  
3       ago? Because they've probably gotten ten new mega-cases in  
4       the past two weeks.

5                    MR. POMERANTZ: So, Your Honor, the last -- the last  
6       two weeks, again, probably since June 15th, we had been  
7       discussing the structure of a mediation. We, the Debtor,  
8       proposed perhaps a combination of Judge Isgur and Jones. We  
9       initially had that conversation with Mr. Clemente, and then we  
10      socialized it with the rest of the Committee members. As of  
11      last Thursday, I believe it was, we had consensus that Judge  
12      Jones, and if available, also Judge Isgur, would make sense.

13                  I sent an email to Judge Jones' clerk, indicating that we  
14      had a hearing today, that it would be helpful if we got a  
15      response, and this morning, two hours before the hearing,  
16      Judge Jones' clerk responded and told Mr. Clemente and I that  
17      he is available and ready and suggested that we have a  
18      conference with -- again, I'm not sure if it'll be him or his  
19      clerk, to talk about availability. Of course, we didn't want  
20      to go ahead and have that discussion until, you know, we got  
21      Your Honor's input on it.

22                  THE COURT: Okay. I mean, a couple of things come to  
23      mind. One is I am just flabbergasted that they would have any  
24      availability. I know they're -- I'm aware of Judge Jones  
25      doing hearings on weekends.

1       But second, I'm also concerned what is their idea of  
2 availability. Because in order for a mediator to meaningfully  
3 help you on this, I mean, it's going to take not just hours  
4 but days of time, unless you want the mediator to just have a  
5 30,000-foot view. And I mean, I just cannot imagine, --

6            MR. POMERANTZ: So, --

7            THE COURT: -- once again, that they would have days  
8 and days to come up to speed with, you know, 11 years of  
9 litigation or however long it was, not that long, with UBS,  
10 you know the years with Acis, you know, the various alleged  
11 claims and causes of action, and, you know, the Byzantine  
12 structure here. I mean, you know, not that they have to be,  
13 you know, as educated as a judge presiding over litigated  
14 matters, but I just cannot imagine they could meaningfully  
15 spend time on this.

16           So what are you all envisioning? Because I know what I'm  
17 envisioning, and maybe we're not seeing it the same way. I  
18 mean, what are you thinking? That you'll go in and spend a  
19 day with, you know, maybe just each of you doing a 25-page  
20 white paper, and you'll either settle it by the end of the day  
21 or not, or what?

22           MR. POMERANTZ: So, let me start by saying that when  
23 everyone raised the issue of Judge Jones and Isgur, everyone  
24 had the same potential concern that Your Honor has mentioned.  
25 You know, my firm and me personally, I'm involved in a couple

1 of cases before Judge Jones now, significant cases. So there  
2 was a concern.

3 I think people also generally thought that if they  
4 accepted and they knew what they were getting into, they would  
5 want to do a good job and they'd have the time.

6 We have not had the ability to have an extensive  
7 discussion. That discussion could either occur with Mr.  
8 Clemente and myself speaking to the clerk or the judge, or if  
9 Your Honor -- nothing stops Your Honor from picking up the  
10 phone, speaking to Judge Jones and asking him as well.

11 But I expect it to be a very intensive mediation process.  
12 I do understand that Judge Jones only does mediations in  
13 person, so this would require people getting to Houston,  
14 which, in my experience, while I have participated in  
15 mediations virtually on the phone, it's a lot more effective  
16 to be in person. We would anticipate detailed mediation  
17 briefs. We would envision each of the parties speaking to  
18 Judge Jones to give him their perspective. But it would be --  
19 it would be a significant assignment.

20 Again, whether we would conclude at the end of August, I  
21 don't know, but I would contemplate a good two, three days of  
22 in-person mediation at the end of August, and then probably,  
23 if necessary, to set up for something else, which, again,  
24 there are several different things. And I mentioned in my  
25 opening remarks why I think people like Judge Jones -- and

1 nothing else, we'll go ahead and adjourn for today. And I'll  
2 keep -- if there's anything worthwhile to report on the  
3 mediation front before we have our hearing on the 14th, I'll  
4 have my courtroom deputy reach out to all counsel by email and  
5 let you know. Okay? All right.

6 MR. POMERANTZ: Thank you very much, Your Honor.

7 MS. PATEL: Thank you, Your Honor.

8 THE COURT: Thank you. We stand adjourned.

9 THE CLERK: All rise.

10 (Proceedings concluded at 3:00 p.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript to  
21 the best of my ability from the electronic sound recording of  
22 the proceedings in the above-entitled matter.

23 /s/ **Kathy Rehling**

07/09/2020

24 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

25 Date

# EXHIBIT F

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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 ) **Case No. 19-34054-sgj11**  
5 In Re: )  
6 )  
7 HIGHLAND CAPITAL ) Dallas, Texas  
8 MANAGEMENT, L.P., ) July 14, 2020  
9 ) 1:30 p.m. Docket  
10 Debtor. )  
11 ) APPLICATIONS TO EMPLOY JAMES  
12 ) P. SEERY AND DEVELOPMENT  
13 ) SPECIALISTS, INC. (774, 775)  
14 )  
15 )

16 TRANSCRIPT OF PROCEEDINGS  
17 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
18 UNITED STATES BANKRUPTCY JUDGE.

19 WEBEX/TELEPHONIC APPEARANCES:

20 For the Debtors: Jeffrey N. Pomerantz  
21 PACHULSKI STANG ZIEHL & JONES, LLP  
22 10100 Santa Monica Blvd.,  
23 13th Floor  
24 Los Angeles, CA 90067  
25 (310) 277-6910

21 For the Debtors: John A. Morris  
22 Greg Demo  
23 PACHULSKI STANG ZIEHL & JONES, LLP  
24 780 Third Avenue, 34th Floor  
25 New York, NY 10017-2024  
26 (212) 561-7700

22 For the Debtors: Ira D. Kharasch  
23 PACHULSKI STANG ZIEHL & JONES, LLP  
24 10100 Santa Monica Blvd.,  
25 13th Floor  
26 Los Angeles, CA 90067-4003  
27 (310) 277-6910

22 For the Debtors: Zachery Z. Annable  
23 Melissa S. Hayward  
24 HAYWARD & ASSOCIATES, PLLC  
25 10501 N. Central Expressway,  
26 Suite 106  
27 Dallas, TX 75231  
28 (972) 755-7104

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Seery - Direct

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1 file Multi-Strat as a bankruptcy, it was hard to get folks to  
2 really come to the table and think about how to settle that  
3 issue.

4 These issues in regard to the total case are much more  
5 complicated. We're going to file a plan. We believe that  
6 will set a bit of a crucible to folks to think about how to  
7 move forward with their claims. We are, as Jeff Pomerantz  
8 mentioned last time, agreed in principle, but we have some  
9 issues to work through with Redeemer that we hope to be able  
10 to resolve by this week. And so that's my internal goal, but  
11 I expect to be able to do it.

12 The reason that's complex is not that it's simply a -- the  
13 arbitration award is not simply a money award; it actually  
14 requires certain offsets, it requires certain assets be sold  
15 and paid for. And we're trying to carve our way around some  
16 of those, because they (inaudible) agreement, because they're  
17 -- they're more difficult than simply exchanging cash for  
18 assets, because we don't have the ability to do that right  
19 now. We don't have the cash, and we're in bankruptcy.

20 So I do believe that we can get these done. And then if  
21 mediation is something that would work, great. We're going to  
22 try to do it without mediation as well. Going to try to do it  
23 before we get to mediation and resolve claims. And if we're  
24 unable to do that, hopefully mediation will push it forward or  
25 we have to have a fallback, which will be dispositive motions

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Seery - Direct

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1 with respect to certain of the claims.

2 But we expect to have and I think we have a number of  
3 claims objections that have (inaudible). We've resolved  
4 those. We're really down to three claims. And one of them is  
5 almost done.

6 Q All right. At the last hearing, --

7 MR. MORRIS: Your Honor, that really does finish the  
8 substance of the testimony with respect to this motion, but at  
9 the last hearing Your Honor raised some questions about PPP  
10 loans.

11 THE COURT: Yes.

12 MR. MORRIS: Would you like me to just take a moment  
13 with Mr. Seery to address that?

14 THE COURT: Yes, please.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q Mr. Seery, you're aware that the Judge raised some  
18 questions about whether and to what extent the Debtor may have  
19 been involved in any of the PPP loans?

20 A Yes.

21 Q And have you done any work to try to figure out the  
22 answers to the questions the Judge posed?

23 A Well, work in response to the question, but also work  
24 previously. So, just a -- quickly, as I think we all know,  
25 the PPP program was put forth to try to give companies cash

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Seery - Direct

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1 that they had to use for employee payments, to continue to  
2 keep payroll supported and to continue to have folks hold  
3 their jobs.

4 We have -- and I think the *Business Insider* article, which  
5 I'm not familiar, I know the publication is not something I  
6 seen much, but I'm not familiar with the specifics of that  
7 article, and -- but any PPP, away from the assets that HCMLP  
8 actually owns or controls. And we've got -- we've got three  
9 -- and I think there's some substance to the article. But  
10 we've got three businesses. And these are -- this is public,  
11 but I'll go into the -- sort of the obvious reasons without  
12 going into the specifics of the business around the ones that  
13 I know of well.

14 Carey Limousine is a business that transports folks in  
15 high-quality cars from airports or from events or between  
16 businesses. It was hit severely by the COVID-19 pandemic.,  
17 particularly with respect to the air transportation, which was  
18 really one of its biggest areas. The business,  
19 notwithstanding Uber and the other type of shared ride  
20 services, had actually done quite well, and Highland was an  
21 owner of a significant portion of that business related to  
22 some loans that it held in various funds.

23 That business's management, with its own outside counsel,  
24 sought a PPP loan. Then our director came to us and discussed  
25 with the Board the propriety of that loan. We engaged outside

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Seery - Direct

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1 counsel, not bankruptcy counsel but counsel that had  
2 particularized expertise in PPP, and spent a ton of time  
3 really understanding both the law as well as the specific  
4 regs. Carey did get a PPP loan. It is potentially  
5 forgivable, depending on how it's used.

6 The second entity that was similar but didn't come to the  
7 Board, we have a business called SSP, which is an excellent  
8 highway business that provides equip -- materials for a lot of  
9 different road construction, but primarily highway road  
10 construction. Very well run business. That entity got a PPP  
11 loan as well, primarily worried about whether the construction  
12 on the highways would shut down.

13 So it's been -- I don't believe that's really happened in  
14 Texas, which is where most of their business is, but they  
15 qualified for that loan. They did not come to the Board. A  
16 very specific carve-out, because one of the interest holders  
17 that we share that position with is a Small Business  
18 Administration fund and, so it was very clear that it was  
19 entitled to that loan.

20 Then there's a third entity called Roma that got a very  
21 small PPP loan. We don't control the entity and we were not  
22 involved in its acquisition of that loan. Again, it would  
23 have to be used as required.

24 One of the things I want to make sure that is in the  
25 record and for Your Honor with respect to Carey, we spent a

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Seery - Direct

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1 lot of time as a Board focused on, one, whether it was legal  
2 to get that loan, first. We're doing everything right, by the  
3 book. We're not going to play in the gray. There is no gray.  
4 There's black and white in these areas.

5 Number two, was it ethical, was it appropriate that we  
6 went and got this loan or that Carey went and got this loan?  
7 Management, with the outside counsel, was sure that we could  
8 do it, but we didn't want to take their word for it, so we  
9 went out and got our own counsel, third-party counsel for the  
10 Board to make sure that this was appropriate.

11 Three, the requirements around these loans are significant  
12 and the penalties for violating them are severe. So if you  
13 get a loan by mistake, are you really required to pay it back?  
14 And if you're mistaken, that will be expensive, but it won't  
15 be a real penalty. But if you get a loan that's really  
16 inappropriate, that you shouldn't have gotten, that was a  
17 material misstatement of any of the facts around it, the  
18 penalties are significant. And not only in terms of the  
19 opprobrium that you'd suffer in the press, because that's  
20 coming, but in terms of how you use the funds.

21 So they can only be used in very specific ways, and we  
22 were exceptionally careful around this program.

23 The basis of the program is to keep people employed. And  
24 with a business like Carey Limousine in particular, where  
25 there's a significant amount of debt, where the business is

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Seery - Examination by the Court

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1 shut down by COVID, where we didn't have the funds to put into  
2 Carey, nor even if we wanted to, we might not have been able  
3 to do it without the Committee's approval because of the  
4 protocol, a PPP loan was not only legal but it was  
5 appropriate. And it's being used in that fashion, meaning to  
6 keep employees employed.

7 Q Thank you very much, Mr. Seery.

8 MR. MORRIS: Your Honor, I have no further questions  
9 of Mr. Seery. Does the Court have any questions?

10 THE COURT: I actually have a follow-up question  
11 regarding the PPP, just to kind of put a bow on this.

12 EXAMINATION BY THE COURT

13 THE COURT: I'm looking at the demonstrative aide. I  
14 don't know if you, Mr. Seery, have it there handy.

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. So I'm turning to Page 6, the  
17 chart, the subchart, Investments and Subsidiaries. The third  
18 column, Privately-Held Equity, Various Companies. I mean,  
19 that would be the type of investment entity we're talking  
20 about here that got the PPP loan: Carey Limousine, SSP, Roma?  
21 Nothing that was -- well, I'm going to say Highland affiliate.  
22 Affiliate, that's a dicey term, but that's the type of entity  
23 in the organizational structure we're talking about, correct?

24 THE WITNESS: Those are the ones -- I want to be very  
25 careful, because I know what I know and I know I won't

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Seery - Examination by the Court

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1 represent anything that I don't know.

2 So, with respect to the entities that HCMLP, the Debtor,  
3 controls, that's absolutely the case. I don't know, and I can  
4 try to find out, but they are not HCMLP-controlled entities.  
5 Whether other entities in the related-party complex received  
6 loans -- so, obviously, HCMLP did not receive a loan. And the  
7 only entities that we were involved with is the ones I  
8 mentioned to you.

9 And I should mention, there are other entities in the  
10 privately-held equity that got other government money, in the  
11 medical space, that they didn't even ask for. HHS pushed  
12 forward payments to folks in the business, medical healthcare-  
13 providing businesses, to assure that they had liquidity to  
14 provide. And so -- and this has been described to me exactly  
15 this way, that they woke up in the morning and found money in  
16 their account. And with one of the companies, they actually  
17 returned a bunch of the money because it was from a dormant  
18 provider number and they didn't believe it was appropriate to  
19 keep that money. So that was one of the entities that we  
20 control with other investors.

21 But with respect to our HCMLP entities, these are the only  
22 ones I know. With respect to other related entities that  
23 might be in the family of businesses, for lack of a better  
24 term, that were alluded to in the *Business Insider* article, I  
25 don't know that answer. So, I -- if I -- I can try to find

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Seery - Examination by the Court

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1 out. I just don't know the answer, Your Honor.

2 THE COURT: All right. Thank you. Well, this has  
3 been extremely helpful.

4 I should ask does anyone have any questions of Mr. Seery?  
5 The Committee counsel, perhaps? Anyone else?

6 MR. CLUBOK: Your Honor, this is Andrew Clubok. In  
7 light of the testimony, I do have some questions on behalf of  
8 UBS.

9 THE COURT: All right. Briefly. Go ahead.

10 MR. CLUBOK: Okay.

11 MR. MORRIS: Your Honor? Your Honor, I'm sorry to  
12 interrupt, but there's no objection lodged here. If Your  
13 Honor wants to permit it, that's obviously the Court's  
14 prerogative. But as just a point of order, having not lodged  
15 an objection, I don't know what right anybody has to cross-  
16 examine the witness.

17 THE COURT: All right. Well, that's why I said  
18 briefly. I think that Mr. Morris makes a good point, Mr.  
19 Clubok. You could have filed a written objection, response,  
20 comment, or something. So, you're a party in interest. I'll  
21 give you a little bit of leeway here. But please keep it  
22 brief.

23 MR. CLUBOK: Yeah. Thank you, Your Honor. It's just  
24 some of the things that Mr. Seery said which we didn't expect  
25 to hear that has raised a few questions that I just very

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Seery - Cross

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1 briefly will try to address.

2 CROSS-EXAMINATION

3 BY MR. CLUBOK:

4 Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham &  
5 Watkins, on behalf of UBS.

6 Mr. Seery, you talked about the fiduciary duties you've  
7 understood yourself to have with respect to certain parties,  
8 and my question to you is: Have you understood, since the  
9 beginning of your service as an Independent Director of  
10 Strand, that you had fiduciary duties to the unsecured  
11 creditors of the Debtor?

12 A It's a -- it's a -- the answer is I understand the  
13 fiduciary duties very well. I think we have fiduciary duties  
14 to the estate. So Highland -- what I tried to explain is that  
15 Highland, as an asset manager, has very specific fiduciary  
16 duties that are set forth in (inaudible) in the cases and the  
17 rules that have interpreted it. We, as directors of Strand,  
18 have a duty to the estate.

19 I don't think it's -- I don't think it's fair, and I'd  
20 have to subject myself to some education from counsel, I don't  
21 think it's fair to say we had a specific fiduciary duty to a  
22 particular creditor.

23 So, for example, if I had a fiduciary duty to UBS, it  
24 would be very difficult for me to object to UBS's claim. It  
25 would be -- I don't know how I could do that as a fiduciary.

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1 yesterday counsel for Mr. Dondero filed a joinder in the  
2 Debtors' objection to Acis's claim. So, again, just thinking  
3 about this in the context of mediation, I think, with that  
4 joinder, they will be a necessary party. So, going back to  
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in  
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing  
12 further, we'll see you on the 21st. And, again, my courtroom  
13 deputy may be reaching out before then if we've got things  
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oo--

17

18

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20

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript to  
23 the best of my ability from the electronic sound recording of  
24 the proceedings in the above-entitled matter.

25 **/s/ Kathy Rehling**

07/16/2020

---

Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

# EXHIBIT G

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:

ACIS CAPITAL MANAGEMENT, L.P.  
and ACIS CAPITAL MANAGEMENT GP,  
LLC,

Debtors.

) Case No. 18-30264-SGJ-11  
 ) Case No. 18-30265-SGJ-11  
 ) (Jointly administered under  
 ) Case No. 18-30264-SGJ-11)  
 )  
 ) DEBTORS' MOTION to FILE  
 ) REDACTED QUARTERLY REPORTS  
 )  
 ) September 23, 2020  
 ) Dallas, Texas

Appearances via video and/or telephone:

For the Reorganized  
Debtors:

Annemarie Chiarello  
Rahkee V. Patel  
Winstead PC  
500 Winstead Building  
2728 North Harwood Street  
Dallas, Texas 75201

For James Dondero:

D. Michael Lynn, of Counsel  
Bonds Ellis Eppich Schafer Jones LLP  
420 Throckmorton Street, Suite 1000  
Forth Worth, Texas 76102

For William T. Neary,  
United States Trustee:

Lisa L. Lambert, Assistant U.S. Trustee  
Office of the U.S. Trustee, Region 6  
1100 Commerce Street, Room 976  
Dallas, Texas 75242-1496

Digital Court  
Reporter:

United States Bankruptcy Court  
Northern District of Texas  
Michael F. Edmond, Judicial  
Support Specialist  
Earle Cabell Building, U.S. Courthouse  
1100 Commerce Street, Room 1254  
Dallas, Texas 75242  
(214) 753-2062, direct; 753-2072, fax

Certified Electronic  
Transcriber:

Palmer Reporting Services  
1948 Diamond Oak Way  
Manteca, California 95336-9124

Proceedings recorded by digital recording;  
transcript produced by federally-approved transcription service.

*The Ruling of the Court*

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1       thing that it might be is commercial information, but I really  
2       don't think there's been a showing that it is of the nature that  
3       107(b) is intended to address.

4               Now don't get me wrong, I am very troubled by some of  
5       what I've heard today. I doubt Mr. Dondero is listening in  
6       personally, but I'm going to say, and maybe it will get back to  
7       him, maybe it won't, but that I'm very troubled by hearing that  
8       Dondero-controlled entities, and I believe the DAF, based on  
9       what I've heard in the past, is Dondero controlled, I'm very  
10       troubled that Dondero-controlled entities are suing Acis and  
11       parties that have dealt with Acis, U.S. Bank, Brigade, and the  
12       Moody's one is really mind-boggling, but I'm very troubled that  
13       this could be hampering Acis' ability to do a reset and it's  
14       driving up expenses.

15               And if these lawsuits were brought before me through a  
16       removal or any other mechanism, you know, first, I would have to  
17       look at subject matter jurisdiction of the Bankruptcy Court.  
18       Yes, we're way past the effective date of Acis' plan, but the  
19       Fifth Circuit case authority provides that if there is a dispute  
20       postconfirmation that bears on the interpretation,  
21       implementation, or execution of a confirmed plan, then the  
22       Bankruptcy Court has subject matter jurisdiction in that  
23       context. And it sure sounds like, hearing Mr. Terry's version  
24       of things today, which sounded very credible, that this is  
25       potentially impinging on the reorganization and plan of Acis.

*The Ruling of the Court*

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1                   So it's very troubling to me that – well, I've said it  
2 before in Highland hearings, that these battles just continue  
3 on, but if it's impairing with a plan I confirmed, it's  
4 impairing a plan I confirmed, it's impairing the ability to  
5 perform under that plan, then that is a problem for the  
6 plaintiffs.

7                   Now I've heard there is no pending litigation in that  
8 regard, but I'm troubled by the April 2020 letter I saw that is  
9 essentially a suggestion we may start this up again, the  
10 litigation that we dismissed. It's just ridiculous, for lack of  
11 a better term, that Dondero and his entities would be doing some  
12 of the things it sounds like they're doing: Suing Moody's, for  
13 crying out loud, for not downgrading the Acis CLOs. If Mr.  
14 Dondero doesn't think that is so transparently vexatious  
15 litigation, yeah, I'm going out there and saying that. I  
16 haven't seen it, but, come on.

17                   So, bottom line, I don't find the 107 standard here is  
18 met today, so I am denying entirely the motion. I haven't been  
19 convinced that this is commercial information that 107(b)  
20 justifies redacting or sealing. But, again, I am most troubled  
21 by what I've heard today.

22                   I have found Mr. Terry to be a very credible witness  
23 today on these points. He's testified in this Court many times  
24 and I continue to find him a very credible witness.

25                   And so to the extent Mr. Dondero is listening or gets

*The Ruling of the Court*

52

1 a transcript, I hope it's loud and clear to him that to the  
2 extent you are engaging in efforts surreptitious or overt to  
3 derail Acis in its reorganization, there is going to be a price  
4 to pay for that. So I hope that message gets to him.

5 Very troubled, very troubled by what I've heard today.

6 All right. Well, I think that concludes our business  
7 here today. Is there anything else anyone wants to raise?

8 MS. LAMBERT: Judge Jernigan, Ms. Lambert for the U.S.  
9 Trustee. Would you like me to prepare an order just as for the  
10 reasons stated?

11 THE COURT: I would like you to do that. Thank you  
12 very much. All right.

13 MS. LAMBERT: And I think I will order the - I think I  
14 will order the transcript and have it sent to Mr. Lynn.

15 THE COURT: All right. Thank you.

16 (The hearing was adjourned at 5:21 o'clock p.m.)

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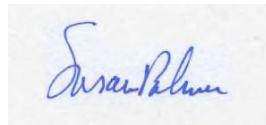
25

State of California )  
 )  
County of San Joaquin ) SS.

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Susan Palmer  
Palmer Reporting Services

Dated September 26, 2020

# EXHIBIT H

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL )  
7 MANAGEMENT, L.P., ) Dallas, Texas  
8 Debtor. ) Wednesday, October 21, 2020  
 ) 10:00 a.m. Docket  
 )  
 ) MOTION TO COMPROMISE  
 ) CONTROVERSY WITH ACIS CAPITAL  
 ) MANAGEMENT [1087]  
 ) *Continued from 10/20/2020*  
 )  
-----

9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
11 UNITED STATES BANKRUPTCY JUDGE.

12 WEBEX/TELEPHONIC APPEARANCES:

13 For the Debtor: Ira D. Kharasch  
14 Jeffrey N. Pomerantz  
15 PACHULSKI STANG ZIEHL & JONES, LLP  
16 10100 Santa Monica Blvd.,  
17 13th Floor  
18 Los Angeles, CA 90067  
19 (310) 277-6910  
20  
21 For the Debtor: John A. Morris  
22 Gregory V. Demo  
23 PACHULSKI STANG ZIEHL & JONES, LLP  
24 780 Third Avenue, 34th Floor  
25 New York, NY 10017-2024  
For Acis Capital Annmarie Antoinette Chiarello  
Management GP, LLC: WINSTEAD, P.C.  
2728 N. Harwood Street, Suite 500  
Dallas, TX 75201  
(214) 745-5250  
For Acis Capital Brian Patrick Shaw  
Management GP, LLC: ROGGE DUNN GROUP, P.C.  
500 N. Akard Street, Suite 1900  
Dallas, TX 75201  
(214) 239-2707

1 motion that ever comes before it.

2 I daresay that Mr. Terry and Ms. Patel and Mr. Shaw firmly  
3 believe that their client has been wronged and that they're  
4 entitled to \$75 million or more. Thankfully, they were able  
5 to check their egos at the door and come to an agreement, I  
6 guess, that they believe represents a fair and reasonable  
7 compromise.

8 So I understand that while -- that Mr. Dondero embraced  
9 and appreciated the arguments that the Debtor made in its  
10 pleading, but the fact of the matter is the Debtor came to a  
11 position when it had the choice of either going forward with  
12 that litigation, with all of the costs and risks and  
13 uncertainty that were described, or taking this settlement.  
14 And it came to the -- I believe the record shows -- the very  
15 considered and reasonable decision to end all of the  
16 litigation with Acis on the terms set forth in the agreement.

17 And I just wanted to kind of -- that doesn't go to any of  
18 the particular -- necessarily go to any of the particular  
19 elements of the legal standard, but so much time was spent  
20 trying to tie Mr. Seery and the Debtor to the objection, and I  
21 think -- I think it's important for the Court to look at this  
22 in context.

23 And frankly, there are other very substantial claims out  
24 there. And Mr. Seery was very clear that each case is going  
25 to be judged on its own merits. And just because we've

10

1 settled a case where we put forth a strong legal position  
2 here, it's only because we got to terms that the Debtor felt  
3 were fair and reasonable. We've taken -- and parties do this  
4 all the time. They take their litigation position and we're  
5 going to take our litigation position. But when it comes to  
6 settlement, you have to view: What are the alternatives? And  
7 that's all Mr. Seery did. That's what the board did, servant  
8 of their fiduciary duties.

9 And I'm going to talk in a few minutes about the benefits  
10 to the estate that this settlement entails, but I just -- I  
11 was a little surprised that anybody would try to say that  
12 because we took a position in litigation we're not allowed to  
13 compromise that position. Because if that were the standard,  
14 Your Honor, no 9019 would ever be approved, because, by  
15 definition, 9019s are compromises.

16 So let me turn for a moment now to the actual elements of  
17 the standard under 9019. The first one is the probability of  
18 success on the merits. As I said, Mr. Seery felt strongly  
19 about the position, but he also articulated some very, very  
20 specific concerns, from *Mirant* to the Court's views on  
21 equities that may not be -- the Court may not share our views  
22 on equities. The Court may not share. The Court has a lot of  
23 experience with these particular litigants. The Court has  
24 already assessed the credibility of certain witnesses in  
25 relation to the claims at issue in this matter. The Court has

1 already rendered decisions with respect to certain aspects of  
2 this matter. And so the Debtor took all of those things into  
3 account in assessing the probability of success on the merits,  
4 and that's all very much in the record.

5 But I did want to point to one other piece of evidence  
6 that hasn't been discussed yet, and that is Professor  
7 Rapoport's expert report that has now been admitted into  
8 evidence. You know, I question the weight that the Court  
9 should give, but never -- only because I'm not sure how -- the  
10 depth of the opinion. But nevertheless, Professor Rapoport  
11 specifically says at the top of Page 5, on Page 13, at the  
12 very end of her opinion as to Question 1, she says, in  
13 substance, if the Court follows *Mirant* and otherwise finds  
14 that damages would benefit the Acis estate, then the Acis  
15 claim, valued by Acis at least \$75 million, could have  
16 significant value. Still, that value would depend on how the  
17 Court found -- how the facts fall after the Court hears  
18 testimony and is able to weigh the evidence.

19 That's kind of what Mr. Seery did. So I'm not even sure  
20 that there's a dispute, frankly, over the probability of  
21 success. Nobody has quantified it. Nobody asked Mr. Seery to  
22 quantify it. We haven't gone down that path.

23 But Professor Rapoport, in her very first opinion, said:  
24 Could be zero, could be \$75 million or more. It depends on  
25 where the Court comes out.

33

1 consistent with the Bankruptcy Rules. The notice was given on  
2 September 23rd, so we're certainly good from notice and  
3 opportunity to be heard, from that standpoint.

4 As we all know and as I went through yesterday in ruling  
5 on the Redeemer Committee settlement, I am consulting  
6 Bankruptcy Rule 9019 as well as the abundance of jurisprudence  
7 that tells bankruptcy courts how they are to evaluate  
8 compromises and settlements: Cases such as *AWECO, Jackson*  
9 *Brewing, TMT Trailer, Cajun Electric, and Foster Mortgage*,  
10 significantly, among the cases.

11 I am to look at, obviously, whether the proposed  
12 compromise is fair and equitable and in the best interest of  
13 creditors when considering probability of success in future  
14 litigation, with due consideration for the uncertainty of law  
15 and fact; when considering the complexity and likely duration  
16 of future litigation and any attendant inconvenience and  
17 delay; and all other factors bearing on the wisdom of the  
18 compromise.

19 Case law also talks about the Court probing into whether a  
20 settlement is within the range of reasonableness, and  
21 obviously the Court should consider the paramount interests of  
22 creditors.

23 So, here, giving all due consideration of the record  
24 before me and the very eloquent arguments, I am going to  
25 approve the compromise today.

1       I'm going to turn for a moment to Mr. Seery's testimony.  
2 Just as I found his testimony to be very credible with regard  
3 to the Redeemer Committee settlement, I once again found it to  
4 be very credible and compelling in connection with the Acis  
5 and Terry settlements.

6       Among other things, I believe his testimony reflected a  
7 deep understanding of the risks and rewards of further  
8 litigation and the uncertainty that there was in both the law  
9 and the fact. He mentioned his understanding of the *Mirant*  
10 holding and how that absolutely posed some risks for the  
11 estate in challenging the claims of the reorganized Acis. He  
12 mentioned what I consider significant due diligence that he  
13 performed. He mentioned not only reading many of the rulings  
14 of this Court throughout the tortured history of the Acis  
15 bankruptcy, but he mentioned meeting with the board members.  
16 In fact, meeting with Mr. Terry and Acis's professionals. He  
17 picked out certain of the issues, the fact issues, the \$10  
18 million note transfer that was argued to be a fraudulent  
19 transfer. He described the disputes regarding the changing of  
20 the fee structure imposed by Highland or Highland entities on  
21 Acis, and he expressed concerns regarding the cost of  
22 litigating all of that.

23       He spoke in depth about Mr. Terry's claims regarding his  
24 retirement funds, and said he thought it was a pretty  
25 straightforward win for the Terrys that he thought should have

1 been settled years ago for full value.

2 He mentioned his knowledge about the Guernsey litigation,  
3 that being a jurisdiction where loser pays. So that was sort  
4 of an open-shut one as far as he was concerned. And he talked  
5 about the Acis GP proof of claim in some depth, regarding the  
6 lawsuits in New York.

7 So, again, I find that he was very compelling and his  
8 testimony reflected significant due diligence.

9 Now, the next thing I want to highlight that is very  
10 compelling to me in deciding I should approve this settlement  
11 is -- and I probably should have mentioned this first and  
12 foremost -- this was a mediated settlement. This is certainly  
13 some indication of its good faith and arm's-length nature, and  
14 certainly is a point in favor of the wisdom of the settlement,  
15 given that we had two very respected co-mediators, retired  
16 Judge Gropper from the Bankruptcy Court of the Seventh  
17 District of New York. Ms. Mayer was a partner at Weil Gotshal  
18 with a very impressive career background. And so it, again,  
19 it is a point very much in favor of the *bona fides* of this  
20 settlement. So I cannot overstate that one.

21 A few other points I will make. In looking at the risks  
22 and rewards and likely expense and inconvenience of further  
23 litigation, while Professor Rapoport estimated maybe \$350,000  
24 to \$1.1 million of fees might be incurred for future  
25 litigation of the issues between Highland and Acis, and while

1 I respect her views tremendously -- I know she's been a fee  
2 examiner in many, many cases and really has some *bona fides* in  
3 speaking about fees in bankruptcy cases -- I tend to think  
4 that is an extremely low estimate. And I can't separate from  
5 this analysis my own experience and knowledge with how  
6 litigious and expensive things have historically been between  
7 Acis and Highland.

8 I cannot remember the final fee application amounts of the  
9 Chapter 11 Trustee and his professionals, but I know that in a  
10 year-plus of the Acis case, the fees were much, much larger  
11 than this amount, and I seem to remember that at least Foley  
12 Lardner had a very, very large unsecured claim in this case  
13 related to its fees representing *Highland v. Acis*, millions of  
14 dollars.

15 So, with complete respect to Professor Rapoport, I believe  
16 with all my heart that that number is way, way low as far as  
17 future fees and expenses.

18 And as Ms. Chiarello pointed out and I think Mr. Morris  
19 pointed out, we don't actually have evidence of Mr. Dondero's  
20 willingness to pay legal fees for fights of *Highland v. Acis*.  
21 While certainly I believe one hundred percent that Mr. Lynn  
22 was told that Dondero would pay those fees and he has every  
23 reason to believe him, I just don't have the equivalent of  
24 evidence there that I can point to, evidence being Mr. Dondero  
25 testifying that he would do that and maybe putting something

1 else in front of me to show a commitment.

2 So I again will turn to Ms. Rapoport's report. While she  
3 used words to the effect of, you know, she thought challenging  
4 this would be a reasonable endeavor, I think that, all in all,  
5 Mr. Seery was just very credible in his evaluation of things  
6 and his strong feeling from the beginning that we're going to  
7 fight this, it should be zero, and then as he did his due  
8 diligence, as he looked at some of the issues -- and I will  
9 point out that Professor Rapoport identified 16 issues of law  
10 this Court would have to determine, in her estimation, and  
11 then there could be potentially 12 fact issues the Court might  
12 have to rule on, depending on how I ruled on the 16 issues of  
13 law. I don't think I could do that as swiftly as maybe this  
14 case needs and deserves to get on its way to reorganization,  
15 and I do think the settlement enhances the likelihood of  
16 confirmation of a plan in the near future. While we may have  
17 miles to go before we get there, I think this settlement is a  
18 step in the right direction, just like the settlement with the  
19 Redeemer Committee is a step in the right direction. And  
20 that's a big factor in my mind. I'm supposed to look at all  
21 factors bearing on the wisdom of the compromise, and I think  
22 the compromise enhances the prospect of a reorganization  
23 sooner rather than later.

24 All right. I reserve the right to supplement in more  
25 detailed findings and conclusions, but Mr. Morris, I'm going

1 THE COURT: All right.

2 MR. KHARASCH: If we need more time, obviously, we  
3 will be letting you know.

4 THE COURT: All right. So, rescheduled for 10:30  
5 tomorrow morning. And if there's nothing further, we're  
6 adjourned. Thank you.

7 MR. KHARASCH: Thank you, Your Honor. Appreciate it.

8 THE CLERK: All rise.

9 (Proceedings concluded at 11:26 a.m.)

10 --oo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript to  
22 the best of my ability from the electronic sound recording of  
23 the proceedings in the above-entitled matter.

24 **/s/ Kathy Rehling**

10/24/2020

25 \_\_\_\_\_  
25 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_ Date

# EXHIBIT I

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) December 10, 2020  
8 ) 9:30 a.m. Docket  
9 Debtor. )  
10 )  
11 HIGHLAND CAPITAL ) **Adversary Proceeding 20-3190-sgj**  
12 MANAGEMENT, L.P., )  
13 )  
14 Plaintiff, ) - MOTION FOR PRELIMINARY  
15 ) INJUNCTION  
16 v. ) - MOTION FOR TEMPORARY  
17 ) RESTRAINING ORDER  
18 JAMES D. DONDERO, )  
19 )  
20 Defendant. )  
21 )

22 TRANSCRIPT OF PROCEEDINGS  
23 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
24 UNITED STATES BANKRUPTCY JUDGE.

25 WEBEX/TELEPHONIC APPEARANCES:

26 For the Plaintiff: Jeffrey N. Pomerantz  
27 PACHULSKI STANG ZIEHL & JONES, LLP  
28 10100 Santa Monica Blvd.,  
29 13th Floor  
30 Los Angeles, CA 90067-4003  
31 (310) 277-6910  
32  
33 For the Plaintiff: John A. Morris  
34 PACHULSKI STANG ZIEHL & JONES, LLP  
35 780 Third Avenue, 34th Floor  
36 New York, NY 10017-2024  
37 (212) 561-7700  
38  
39 For the Official Committee  
40 of Unsecured Creditors: Matthew A. Clemente  
41 SIDLEY AUSTIN, LLP  
42 One South Dearborn  
43 Chicago, IL 60603  
44 (312) 853-7539

1 THE COURT: Yes.

2 MR. BONDS: Can I have a second? Mr. Dondero did  
3 apologize to counsel and to Mr. Seery as well, and so the idea  
4 that Mr. Dondero has not apologized is not entirely correct.

5 THE COURT: Okay. Well, if I misunderstood, I  
6 apologize. But I guess what I was really trying to convey is,  
7 in a situation like this, I think coming into court and taking  
8 his lumps and saying things under oath might have been a  
9 better way to proceed.

10 I guess the second thing I want to say is I wish Mr.  
11 Dondero was here, because maybe I'm reading this wrong, but I  
12 think he needs to hear and know he is not in charge anymore of  
13 Highland. It may have been his baby. He may have created its  
14 wealth. But when he and the board made the decision to file  
15 Chapter 11, number one, that changed everything. And then  
16 number two, when the Committee was formed and was threatening  
17 "We think we need a Chapter 11 trustee because of conflicts of  
18 interest of Mr. Dondero and others," and when the Committee  
19 negotiated something short of that with the Debtor in January  
20 2020, you know, a settlement that involved Mr. Dondero no  
21 longer being in charge, no longer being CEO, no longer having  
22 any role except portfolio manager with the Debtor, and when  
23 various protocols were negotiated, heavily negotiated, for  
24 weeks, detailed, complex protocols, life changed even further.  
25 It changed when he filed Chapter 11, when he put his baby,

1 Highland, in Chapter 11, and then it changed further in  
2 January 2020 when this global corporate governance settlement  
3 was reached. As we know, it involved independent new board  
4 members coming in and eventually a new CEO. He's not in  
5 charge.

6 Now, that doesn't mean he's not a party in interest, and  
7 he can certainly weigh in with pleadings in the bankruptcy  
8 court. But these communications that I've admitted into  
9 evidence, and the declaration, the sworn declaration of Mr.  
10 Seery, suggest to me that he's not fully appreciating that,  
11 sorry, you're not in charge. And when you chose to put the  
12 company in bankruptcy because of the overwhelming debt, it  
13 started a cascade of events, so that now I'm depending on a  
14 debtor-in-possession with a new board and a new CEO and a  
15 Committee of very sophisticated members and professionals who  
16 are working in tandem with the Debtor to be in charge,  
17 basically. All right? So that's another thing I just feel  
18 compelled to say for Mr. Dondero's benefit.

19 I guess another thing is there was a little bit of a  
20 theme, Mr. Bonds, in your comments that Mr. Dondero is just  
21 concerned, more than anything else, about the way employees  
22 are being treated, or at least that's a major concern. And I  
23 don't find that to be especially compelling. I mean, maybe if  
24 he was sworn under oath and testified, I would believe that,  
25 but it doesn't feel like what's really going on here. Again,

25

1 he took the step of deciding that the company should file  
2 Chapter 11. We had the change in corporate governance in  
3 January. And he has the ability -- everyone, I think, would  
4 very much be interested in a plan that he supports. You know,  
5 he wants to get the company back. That has been made clear in  
6 hearings from time to time, and I believe, from Seery's  
7 declaration and Highland's lawyers, that they've been and will  
8 remain receptive to Mr. Dondero's ideas for a different type  
9 of plan that might allow him to get back into control of  
10 Highland, if he puts in adequate consideration that makes the  
11 Committee and others happy.

12 But we're in a proverbial the-train-is-leaving-the-station  
13 posture right now. Okay? We've got confirmation coming up  
14 the second week of January or something like that. Okay. So  
15 the train is leaving the station, so we're running out of time  
16 to hear what Dondero might want to do as far as an alternative  
17 plan.

18 So, as far as the requested TRO, I appreciate that Mr.  
19 Dondero and his counsel are worried about some ambiguity, but  
20 I'm looking through the literal wording that has been  
21 proposed, and the wording proposed is that Dondero is  
22 temporarily enjoined and restrained for communicating, whether  
23 orally, in writing, or otherwise, directly or indirectly, with  
24 any board member, unless Mr. Dondero's counsel and counsel for  
25 the Debtor are included in such communications. Not ambiguous

1 Court next Wednesday, he needs to testify. And if NexPoint,  
2 through whoever their decision-maker is, is wanting to urge a  
3 position to the Court, they need a human being to testify.  
4 And I'll hear Seery and I'll hear Dondero and I'll hear  
5 whoever that person is, and that's what's going to matter, you  
6 know, most to me. Yeah, we have some legal issues, certainly,  
7 but I like to hear business people explain things, no offense  
8 to the lawyers. But it's always very helpful to hear the  
9 business people in addition to the lawyers. All right. So,  
10 Mr. Morris, you're going to upload that TRO for me.

11 MR. MORRIS: Yes, Your Honor.

12 THE COURT: Mr. Wright, you can upload your order  
13 setting your motion for hearing next Wednesday at 1:30. And I  
14 think we have our game plan for now. Anything else? All  
15 right. We're adjourned.

16 THE CLERK: All rise.

17 (Proceedings concluded at 11:33 a.m.)

18 --oo--

19  
20 CERTIFICATE

21 I certify that the foregoing is a correct transcript to  
22 the best of my ability from the electronic sound recording of  
23 the proceedings in the above-entitled matter.

24  
25 **/s/ Kathy Rehling**

**12/11/2020**

---

Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

# EXHIBIT J

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL )  
7 MANAGEMENT, L.P., ) Dallas, Texas  
8 ) Wednesday, December 16, 2020  
9 Debtor. ) 1:30 p.m. Docket  
10 )  
11 ) - MOTION FOR ORDER IMPOSING  
12 ) TEMPORARY RESTRICTIONS [1528]  
13 ) - DEBTOR'S EMERGENCY MOTION TO  
14 ) QUASH SUBPOENA AND FOR ENTRY  
15 ) OF PROTECTIVE ORDER [1564,  
16 ) 1565]  
17 ) - JAMES DONDERO'S MOTION FOR  
18 ) ENTRY OF ORDER REQUIRING  
19 ) NOTICE AND HEARING [1439]  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
13 UNITED STATES BANKRUPTCY JUDGE.

14 WEBEX APPEARANCES:

15 For the Debtor: Jeffrey N. Pomerantz  
16 PACHULSKI STANG ZIEHL & JONES, LLP  
17 10100 Santa Monica Blvd.,  
18 13th Floor  
19 Los Angeles, CA 90067-4003  
20 (310) 277-6910  
21 For the Debtor: John A. Morris  
22 Gregory V. Demo  
23 PACHULSKI STANG ZIEHL & JONES, LLP  
24 780 Third Avenue, 34th Floor  
25 New York, NY 10017-2024  
26 (212) 561-7700  
27 For the Official Committee  
28 of Unsecured Creditors: Matthew A. Clemente  
29 SIDLEY AUSTIN, LLP  
30 One South Dearborn Street  
31 Chicago, IL 60603  
32 (312) 853-7539  
33  
34  
35

1       The Movants are not parties to those agreements. The  
2 testimony is undisputed that there are many holders of  
3 preferred shares and notes that have had no notice of this  
4 proceeding that will undoubtedly be impacted by the tying of  
5 the hands of the portfolio manager. The chart that was  
6 attached as Exhibit B expressly shows just what a large  
7 portion of interested parties and people who would be affected  
8 by this motion are not -- they didn't get notice. There was  
9 no attempt to get notice. There was no attempt to get their  
10 consent. All of that testimony is now in the record, and I  
11 think due process alone would prevent the entry or even the  
12 consideration of an order of this type.

13       There is nothing improper that's been alleged. There is  
14 no -- there is no allegation of fraud. There is no allegation  
15 of breach of contract of any kind. There's not even a  
16 question of business judgment. The Movants didn't even do  
17 their diligence to ask the Debtor why they made these  
18 transactions. There is nothing in the record that shows that  
19 the Debtor, as the portfolio manager of the CLOs, did anything  
20 improper.

21       The only thing that the Movants care about is that they  
22 don't like the results in two particular trades. I don't  
23 think that that meets their burden of persuasion that the  
24 Court should enter an order of this type, and I would like to  
25 relieve Mr. Seery of the burden, frankly, and the Court, of

1 having to put on testimony to justify transactions that really  
2 aren't even being questioned, Your Honor.

3 So the Debtor would respectfully move for the denial of  
4 the motion and the relief sought therein.

5 THE COURT: All right. Your request for a directed  
6 verdict, something equivalent to a directed verdict here, is  
7 granted. I agree that the Movant has wholly failed to meet  
8 its burden of proof here today to show the Court, persuade the  
9 Court that, as Mr. Morris said, I should essentially tie the  
10 hands of the Debtor as a portfolio manager here, as stated.  
11 Nothing improper has been alleged. There has been no showing  
12 of a statutory right here, or a contractual right here, on the  
13 part of the Movants.

14 I am -- I'm utterly dumbfounded, really. I agree with the  
15 -- I was going to say innuendo; not really innuendo -- I agree  
16 with part of the theme, I think, asserted by the Debtor here  
17 today that this is Mr. Dondero, through different entities,  
18 through a different motion. I feel like he sidestepped the  
19 requirement that I stated last week that if we had a contested  
20 hearing on his motion, Dondero's motion, that I was going to  
21 require Mr. Dondero to testify. He apparently worked out an  
22 eleventh hour agreement with the Debtor on his motion to avoid  
23 that. But, again, these so-called CLO Motions very clearly,  
24 very clearly, in this Court's view, were pursued at his sole  
25 direction here.

1       This is almost Rule 11 frivolous to me. You know, we're  
2 -- we didn't have a Rule 11 motion filed, and, you know, I  
3 guess, frankly, I'm glad that a week before the holidays begin  
4 we don't have that, but that's how bad I think it was, Mr.  
5 Wright and Mr. Norris. This is a very, very frivolous motion.  
6 Again, no statutory basis for it. No contractual basis. You  
7 know, you didn't even walk me through the provisions of the  
8 contracts. I guess that would have been fruitless. But you  
9 haven't even shown something equitable, some lack of  
10 reasonable business judgment.

11       Bluntly, don't waste my time with this kind of thing  
12 again. You wasted my time. We have 70 people on the video.  
13 Utter waste of time.

14       All right. So, motion is denied. Mr. Morris, please  
15 upload an order.

16           MR. MORRIS: Thank you, Your Honor.

17           THE COURT: All right. Do we have any other business  
18 to accomplish today?

19           MR. POMERANTZ: I don't think so, Your Honor. I know  
20 we will see you tomorrow in connection with Mr. Daugherty's  
21 relief from stay motion.

22           THE COURT: Well, yeah, we do have that. Okay. We  
23 will see you tomorrow. We stand adjourned.

24           MR. CLEMENTE: Thank you, Your Honor.

25           MR. MORRIS: Thank you, Your Honor.

65

1 THE CLERK: All rise.

2 (Proceedings concluded at 3:05 p.m.)

3 --oo--

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from  
21 the electronic sound recording of the proceedings in the  
above-entitled matter.

22 **/s/ Kathy Rehling**

**12/17/2020**

23

24 \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_ Date

25

# EXHIBIT K

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) Friday, January 8, 2021  
8 ) 9:30 a.m. Docket  
9 Debtor. )  
10 )  
11 HIGHLAND CAPITAL ) **Adversary Proceeding 20-3190-sgj**  
12 MANAGEMENT, L.P., )  
13 )  
14 Plaintiff, ) PRELIMINARY INJUNCTION  
15 ) HEARING [#2]  
16 v. )  
17 )  
18 JAMES D. DONDERO, )  
19 )  
20 Defendant. )  
21 )

22 TRANSCRIPT OF PROCEEDINGS  
23 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
24 UNITED STATES BANKRUPTCY JUDGE.

25 WEBEX/TELEPHONIC APPEARANCES:

26 For the Debtor/Plaintiff: Jeffrey N. Pomerantz  
27 PACHULSKI STANG ZIEHL & JONES, LLP  
28 10100 Santa Monica Blvd.,  
29 13th Floor  
30 Los Angeles, CA 90067-4003  
31 (310) 277-6910

32 For the Debtor/Plaintiff: John A. Morris  
33 PACHULSKI STANG ZIEHL & JONES, LLP  
34 780 Third Avenue, 34th Floor  
35 New York, NY 10017-2024  
36 (212) 561-7700

Dondero - Cross

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1 David Klos, who is the person who put the model together, who  
2 has been working on it for six or nine months, and no one else  
3 S has a copy of? Yes. Yeah, I have to -- I have to access  
4 him. I don't believe that's the -- inappropriate or in any  
5 way violating the spirit of the TRO.

6 I believe settlement in this case is only going to happen  
7 with somebody fostering communication. And Ellington's role,  
8 which I thought was a good one and I thought he was performing  
9 well as settlement counsel, was an important role. And I used  
10 him for things like -- and Seery also used him for things. As  
11 recently as two days before Ellington was fired, Seery gave  
12 him a shared services proposal to negotiate with me.  
13 Ellington has always been the go-between from a settlement and  
14 a legal standpoint. I think his role there was -- it was  
15 valued. To try to honor the TRO was things like Multi-Strat,  
16 that I didn't remember correctly. Ninety percent of the time  
17 or for the last 20 years I would have gone directly to  
18 Accounting and Dave Klos for it, but I purposely went to  
19 settlement counsel in terms of Ellington in order to get the  
20 Multi-Strat information which we needed in order to put the  
21 pot plan together that we went to the Independent Board with  
22 at the end of December.

23 Q (faintly) And do you recall the questions that Debtor's  
24 counsel had regarding the letters sent by K&L Gates to clients  
25 of the Debtor?

Dondero - Cross

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1 MR. MORRIS: I'm sorry, Your Honor. I had trouble  
2 hearing that question.

3 THE COURT: Please repeat.

4 MR. BONDS: Sure.

5 BY MR. BONDS:

6 Q Do you recall the questions Debtor's counsel had regarding  
7 the letters sent by K&L Gates to the clients of the Debtor --  
8 to the Debtor?

9 A Yes.

10 Q You testified on direct that the letters were sent to do  
11 the right thing; is that correct?

12 A Yes.

13 Q What did you mean by that?

14 A I don't want to repeat too much of what I just said, but  
15 the Debtor has a contract to manage the CLOs, which in no way  
16 is it not in default of. It doesn't have the staff. It  
17 doesn't have the expertise. Seery has no historic knowledge  
18 on the investments. The investment staff of Highland has been  
19 gutted, with me being gone, with Mark Okada being gone, with  
20 Trey Parker being gone, with John Poglitsch being gone.

21 And there's -- there's a couple analysts that are a year  
22 or two out of school. The overall portfolio is in no way  
23 being understood, managed, or monitored. And for it to be  
24 amateur hour, incurring losses for no business purpose, when  
25 the investors have requested numerous times for their account

Dondero - Cross

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1 not to be traded, is crazy to me. Where the investors say, We  
2 just want our account left alone. We just want to keep the  
3 exposure. And Jim Seery decides no, there's -- I'm going to  
4 turn it into cash for no reason. I'm just going to sell your  
5 assets and turn them to cash and incur losses by doing it the  
6 week of Thanksgiving and the week of Christmas. I think it's  
7 -- it's shameful. I'm glad the compliance people and the  
8 general counsel at HFAM and NexPoint saw it the same way. I  
9 didn't edit their letters, proof their letters, tell them how  
10 to craft their letters. They did that themselves, with  
11 regulatory counsel and personal liability. They put forward  
12 those letters.

13 MR. MORRIS: Your Honor (garbled) the testimony that  
14 Mr. Dondero just gave about these people saw it. They're not  
15 here to testify how they saw it. We know that Mr. Dondero  
16 personally saw and approved the letters before they went out.  
17 He can testify what he thinks, what he believes. I have no  
18 problem with that. But there should be no evidence in the  
19 record of what the compliance people thought, believed,  
20 understood, anything like that. It's not right.

21 THE COURT: All right. That's essentially a --

22 MR. BONDS: Your Honor?

23 THE COURT: -- a hearsay objection, I would say, or  
24 lack of personal knowledge, perhaps. Mr. Bonds, what is your  
25 response?

Dondero - Cross

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1 MR. BONDS: Your Honor, my response would be that  
2 there are several exhibits the Debtor introduced today that  
3 stand for the proposition that the compliance officers were  
4 concerned. So I think there is ample evidence of that in the  
5 record.

6 THE COURT: I didn't --

7 MR. MORRIS: Your Honor, the letter --

8 THE COURT: I did not understand what you said is in  
9 the record. Say again.

10 MR. BONDS: Your Honor, I'm sorry. The -- there are  
11 -- there are references that are replete in the record that  
12 have to do with the compliance officers' understanding of the  
13 transactions.

14 THE COURT: I don't know what you're referring to.

15 THE WITNESS: Your Honor?

16 THE COURT: I've got a lot of exhibits. You're going  
17 to have to point out what you think --

18 THE WITNESS: Can I -- can I -- can I -- can I answer  
19 for -- that for a second? The letters that were signed by the  
20 compliance people or by the businesspeople at NexPoint and  
21 HFAM objecting to the transactions, those letters were their  
22 beliefs, their researched beliefs. They weren't --

23 THE COURT: Okay.

24 THE WITNESS: -- micromanaged by me. You know, they  
25 weren't -- I agree with them, but those weren't my beliefs

Dondero - Cross

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1 that they've stated. Those were their own beliefs and their  
2 own research, --

3 THE COURT: All right.

4 THE WITNESS: -- and the record should reflect --

5 THE COURT: This is clearly hearsay. I mean, it's  
6 one thing to have a letter, but to go behind the letter and  
7 say, you know, what the beliefs inherent in the words were is  
8 inadmissible. All right? So I strike that.

9 THE WITNESS: Maybe ask your question again.

10 BY MR. BONDS:

11 Q Yeah. What is your understanding of the rights that these  
12 parties had and what do you believe that was intended to be  
13 conveyed by the compliance officers?

14 MR. MORRIS: Objection. Calls -- calls for Mr.  
15 Dondero to divine the intent of third parties. Hearsay.

16 THE COURT: I sustain.

17 MR. BONDS: Your Honor, --

18 MR. MORRIS: No foundation.

19 MR. BONDS: -- I don't agree. I think that this is  
20 asking Mr. Dondero what he thinks.

21 MR. MORRIS: The letters speak for themselves, Your  
22 Honor.

23 THE COURT: Okay. I sustain --

24 MR. MORRIS: And Mr. --

25 THE COURT: I sustain the objection.

Dondero - Cross

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1 MR. MORRIS: All right. Thank you.

2 THE WITNESS: Ask me what I know. Or ask me what my  
3 concerns --

4 BY MR. BONDS:

5 Q Let me ask you this. What were your concerns relating to  
6 the compliance officers' exhibit?

7 A My concerns regarding the transaction, the transactions,  
8 which may repeat what I've said before, but I do want to make  
9 sure it gets in the record. So if we have to make a -- these  
10 were my concerns, whether or not they were the compliance  
11 people's concerns. I believe they were, and I believe they  
12 were similar, but I'm just going to say these are -- these  
13 were my concerns.

14 The Debtor, with its contractual -- with its contract with  
15 the CLOs, were in no way -- was in no way compliant with that  
16 contract or not in default of that contract. Bankruptcy is a  
17 reason for default. Not having the key men specified in the  
18 contract currently employed by the Advisor is a violation.  
19 Not having adequate investment staff to manage the portfolio  
20 is a violation of that contract. Announcing that you're  
21 laying off everybody and will no longer be a registered  
22 investment advisor is proclaiming that you, if you even have  
23 any -- any -- pretend that you're qualified or in compliance  
24 with the contract now, you're broadcasting that you won't be  
25 in three weeks, are -- are all mean that you're not in good

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1 MR. BONDS: Thank you, Your Honor.

2 (Proceedings concluded at 4:09 p.m.)

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CERTIFICATE

19 I certify that the foregoing is a correct transcript from  
20 the electronic sound recording of the proceedings in the  
above-entitled matter.

21 /s/ **Kathy Rehling**

01/11/2021

22 \_\_\_\_\_  
23 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

24 \_\_\_\_\_  
25 Date

# EXHIBIT L

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 HIGHLAND CAPITAL )  
7 MANAGEMENT, L.P., ) Dallas, Texas  
8 Debtor. ) Tuesday, January 26, 2021  
9 ) 9:30 a.m. Docket  
10 )  
11 ) MOTION FOR ENTRY OF ORDER  
12 ) AUTHORIZING DEBTOR TO  
13 ) IMPLEMENT KEY EMPLOYEE  
14 ) PLAN [1777]  
15 )  
16 )

17 HIGHLAND CAPITAL ) **Adversary Proceeding 21-3000-sgj**  
18 MANAGEMENT, L.P., )  
19 )  
20 Plaintiff, )  
21 )  
22 v. ) PLAINTIFF'S MOTION FOR A  
23 ) PRELIMINARY INJUNCTION AGAINST  
24 ) CERTAIN ENTITIES OWNED AND/OR  
25 ) CONTROLLED BY MR. JAMES  
L.P., et al. ) DONDERO [5]  
Defendants. )  
\_\_\_\_\_  
18 )  
19 )  
20 )  
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22 )  
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24 )  
25 )

26 TRANSCRIPT OF PROCEEDINGS  
27 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
28 UNITED STATES BANKRUPTCY JUDGE.

29 WEBEX APPEARANCES:

30 For the Debtor: Jeffrey Nathan Pomerantz  
31 PACHULSKI STANG ZIEHL & JONES, LLP  
32 10100 Santa Monica Blvd.,  
33 13th Floor  
34 Los Angeles, CA 90067-4003  
35 (310) 277-6910

36 For the Debtor: John A. Morris  
37 PACHULSKI STANG ZIEHL & JONES, LLP  
38 780 Third Avenue, 34th Floor  
39 New York, NY 10017-2024  
40 (212) 561-7700

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1 can't talk them about specifically, but they're at least 20  
2 percent better than what the Debtor has put forward as far as  
3 a plan. And what we put forward is elegant, it's simpler, it  
4 treats the employees fairly, it gives the business continuity,  
5 it gives investors continuity, and it's not just a harsh,  
6 punitive liquidation that's going to end up in a myriad of  
7 litigation.

8 We're paying a premium, it's a capitulation price, to try  
9 and get to some kind of settlement. And I encourage you to  
10 look at it. It's elegant. It's straightforward. It's  
11 simple. And now that you've encouraged and gotten us up to a  
12 number that's well in excess of the Debtor, maybe a little  
13 pressure on other people to treat employees fairly, maybe not  
14 liquidate a business that's important in Dallas, that has been  
15 a big business for a number of years, doing enormous good  
16 things for a lot of people.

17 You know, we went into bankruptcy with \$450 million of  
18 assets and almost no debt. And we've been driven into the  
19 ground by the process. And then the plan is to just harshly  
20 liquidate going forward. I -- I -- it's crazy. I don't know  
21 what else to do to stop the train other than what we've  
22 offered.

23 THE COURT: All right. Well, I hear what you're  
24 saying, and I do, just because -- I don't know if you left the  
25 room or not, but we did have discussion of Section 206 of the

1 Investment Advisers Act today. It was put on the screen. Mr.  
2 Post was asked what was unlawful as far as what had happened  
3 here, what was going on here, what was fraudulent, deceptive,  
4 or manipulative, in parsing through the words of the statute.  
5 And he said Mr. Seery engaged in deceptive acts because he  
6 wasn't trying to maximize value. Okay? I'm not an expert on  
7 the Investment Advisers Act, but I know that that was not a  
8 deceptive act.

9 And so I'll allow the plan to be filed under seal, but  
10 it's not going to be unsealed absent an order of the Court.  
11 Okay? So we'll just leave it at that for now. And while I  
12 still encourage good-faith negotiations here, I've said it  
13 umpteen times, where you're tired of the cliché, probably:  
14 The train is leaving the station. And if you want the Court  
15 to have patience in the process and if you want the parties to  
16 cooperate in good faith, it might help if we didn't have  
17 things like Dugaboy and Get Good Trust filing a motion for an  
18 examiner 15 months into the case.

19 I mean, it feels to me, Mr. Dondero, whether I'm right or  
20 wrong, that it's like you've got a twofold approach here: I  
21 either get the company back or I burn the house down. And I'm  
22 telling you right now, if we don't have agreements, --

23 MR. DONDERO: That's not true.

24 THE COURT: -- if we don't have agreements and we  
25 come back on the 5th for a continuation of this hearing and a

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1 motion to hold you in contempt, you know, I'm leaning right  
2 now, based on what I've heard so far, and I know I haven't  
3 heard everything, but I'm leaning right now towards finding  
4 contempt and shifting a whole bundle of attorneys' fees.  
5 That, to me, seems like the likely place we're heading.

6 I mean, I commented at the December hearing on the  
7 preliminary injunction against you personally that it had been  
8 like a \$250,000 hearing, I figured, okay, just guesstimating  
9 everybody's billable rate times the hours we spent. Well,  
10 here we were again, and I know we've got all this time outside  
11 the courtroom preparing, taking depositions. I mean, what  
12 else is a judge to think except, by God, let's drive up  
13 administrative expenses as much as we can; if we can't win,  
14 we're going to go down fighting? That's what this looks like.  
15 Okay? So if it's not really what's going on, then you've got  
16 to work hard to change my perceptions at this point.

17 MR. RUKAVINA: Your Honor, I hear everything what  
18 you're saying, and I'm going to discuss it very bluntly with  
19 my clients. But we're being asked not to exercise contract  
20 rights in the future. This is not a contempt hearing. And  
21 Your Honor, we did ask and offered the estate a million  
22 dollars, found money, plus to waive almost all our plan  
23 objections, if they would just put this case on pause for 30  
24 days.

25 So we are trying. We are trying creative solutions here.

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1 We know that the train is leaving. We've put our money where  
2 our mouth is. We will continue trying. But Your Honor, this  
3 is not a contempt proceeding, and my clients are not Mr.  
4 Dondero. You've heard they're independent boards.

5 MR. POMERANTZ: I can't leave that last comment  
6 without a response. Yes, there was an offer of a million  
7 dollars, by an entity that owes the estate multiples of that.  
8 So they are offering to pay us something that they already owe  
9 us. So Mr. Rukavina continues try to do this. We will not  
10 stand for it.

11 MR. RUKAVINA: That is not a fair statement, sir. I  
12 misrepresented nothing. We were offering you a million  
13 dollars, with no conditions, earned upon receipt, with no  
14 credit, no deduction for any of our liability. So you're free  
15 to say no, sir, but you're not going to tell the judge that I  
16 misrepresented something.

17 THE COURT: All right.

18 MR. POMERANTZ: Should tell the Court --

19 THE COURT: You know what?

20 MR. POMERANTZ: -- that that entity owed the Debtor.

21 THE COURT: You know what? You know what? I am more  
22 focused on, Mr. Rukavina, your comment that this Court can't  
23 enjoin your clients from exercising contractual rights when,  
24 again, in January of 2020, the representation was made and it  
25 was ordered, "Mr. Dondero shall not cause any related entity

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1 to terminate any agreements with the Debtor." Okay? That was  
2 -- go back and look at the transcript. That was so meaningful  
3 to me.

4 We were facing a possible trustee. And that's what I did  
5 in the *Acis* case. Okay? I had a Chapter 11 trustee. And it  
6 was not a perfect fit, to be sure. But it is where we were  
7 heading in this case, had the lawyers and parties not  
8 negotiated what they did. That was a very important  
9 provision, convincing me that, you know what, I think the  
10 structure they've got will be better than a trustee. And it  
11 has, for the most part. But the fees have gone out the roof,  
12 and I lay that at the feet of Mr. Dondero, for the most part.  
13 Okay? We have a bomb thrown every five minutes by either him  
14 personally or the Dugaboy or the Get Good Trust or the Funds  
15 or the Advisors or I don't know who else. Okay?

16 So the train is leaving the station, unless you all come  
17 to me and say, okay, we've maybe got a -- Mr. Pomerantz's word  
18 -- grand solution here. Okay? If you get there in the next  
19 few days, wonderful. Okay? But I don't know what else to say  
20 except I'm tired of the carpet-bombing, and if I had to rule  
21 this minute, there would be a huge amount of fee-shifting for  
22 what we went through today, for what we went through in  
23 December, for the restriction motion that, after I called it  
24 frivolous, the lawyers were sending letters pretty much  
25 regurgitating the same arguments. All right. So, not a happy

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1 || camper.

2           But upload your order on the motion to seal the plan.  
3 And, again, it's not going to be unsealed absent a further  
4 order of the Court. And if you all come to me next week and  
5 say, hey, we've got something in the works here, okay, I'll  
6 consider unsealing it and letting you go down a different  
7 path. But I'm not naïve. I feel like this is just more  
8 burning the house down, maybe. I don't know. I hope I'm  
9 wrong. I hope I'm wrong. But all right. So I guess we'll  
0 see you next week.

11 MR. POMERANTZ: Thank you, Your Honor.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: All right. We're adjourned.

14 MR. RUKAVINA: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 6:08 p.m.)

17 || ---oo---

20 | CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 /s/ Kathy Rehling

01/28/2021

25 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

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9 wrong. I hope I'm wrong. But all right. So I guess we'll  
0 see you next week.

11 MR. POMERANTZ: Thank you, Your Honor.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: All right. We're adjourned.

14 MR. RUKAVINA: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 6:08 p.m.)

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